

No. 17310

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SOUTHERN CALIFORNIA ASSOCIATED
NEWSPAPERS, d/b/a SOUTH BAY DAILY
BREEZE,
Respondent.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer to Complaint (G.C. 1-E).....	7
Answer to Petition for Enforcement (U.S.C.A.)....	337
Certificate of the National Labor Relations Board..	31
Complaint and Notice of Hearing (G.C. 1-C).....	3
Decision and Order.....	20
Exceptions for General Counsel to Intermediate Report	29
Exceptions of Southern California Associated Newspapers to Intermediate Report.....	27
Intermediate Report and Recommended Order.....	8
Conclusions of Law.....	19
Findings of Fact.....	8
Recommendation	19
Statement of the Case.....	8
Names and Addresses of Attorneys.....	1
Petition for Enforcement of an Order of the Na- tional Labor Relations Board (U.S.C.A.).....	335
Statement of Points (U.S.C.A.).....	339
Transcript of Proceedings.....	33

ii.

Witnesses for General Counsel:

	PAGE
Clark, Bernard	
—Direct	108, 246
—Cross	129, 249
—Redirect	144
Clark, David	
—Direct	37
—Cross	52
—Redirect	101, 208
—Recross	107
Leathem, Fred Malachy	
—Direct	152
—Cross	159, 181
—Redirect	178, 206, 315
—Recross	207, 316

Witnesses for Respondent:

Clark, Bernard	
—Direct	210
—Cross	223
—Redirect	225, 229
—Recross	227, 231
Clark, David	
—Direct	232
—Cross	243
—Redirect	245
Collins, Walter Howard	
—Direct	251
—Cross	292
—Redirect	301, 305, 313
—Recross	303, 313
Gagnon, Ernest Lionel	
—Direct	160
—Cross	171

	PAGE
Exhibits for General Counsel:	
1-C—Complaint and Notice of Hearing.....	3
1-E—Answer to Complaint.....	7
3—Article V, Jurisdiction.....	319
4—Inter Office Communication, Dated 12-22-59, Subject Termination.....	321
Exhibits for Respondent:	
1—Affidavit of David Clark.....	322
2—Deposition of David Clark.....	324
3—Deposition of Ernest L. Gagnon.....	327
4—Jurisdiction and Manning, Section 17....	328
5—Deposition of David Clark.....	331

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GENERAL COUNSEL'S EXHIBIT 1-C

United States of America
Before the National Labor Relations Board
Twenty-First Region
Case No. 21-CA-3850

SOUTH BAY DAILY BREEZE
and
DAVID CLARK, An Individual

COMPLAINT AND NOTICE OF HEARING

It having been charged by David Clark, an individual, that South Bay Daily Breeze (herein called Respondent) has been engaging in and is engaging in unfair labor practices affecting commerce as set forth in the Labor Management Relations Act, 1947, as amended, herein called the Act, the General Counsel of the National Labor Relations Board (herein called the Board), on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing pursuant to Section 10 (b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8.

1. The charge was filed by David Clark on December 24, 1959, and was served on Respondent on December 28, 1959, by registered mail.

2. Respondent is, and at all times material hereto has been, a corporation duly organized under and existing by virtue of the laws of the State of California, having its principal office and place of business in the City of Redondo Beach, California, where it is now,

and at all times material hereto has been, continuously engaged at said place of business in the publication, sale and distribution of newspapers.

3. Respondent holds membership in and subscribes to interstate news services, to wit, Associated Press and United Press International, and publishes national syndicated features and advertises nationally sold products. Respondent, in the course and conduct of its business operations during the past 12-month period, received a gross annual income in excess of \$200,000. Its annual purchases of newsprint originating outside the State of California exceed \$10,000 in value.

4. Respondent is and at all times material herein has been engaged in commerce and in business affecting commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

5. Mailers Union No. 9, International Typographical Union, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

6. Respondent did on or about December 21, 1959, discharge David Clark.

7. Respondent has since the date of discharge set out in paragraph 6 above failed to, refused to and continues to refuse to reinstate the employee named above to his former or substantially equivalent position or employment.

8. Respondent did discharge and refuse or fail to reinstate the employee named above for the reason that he joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

9. By the acts described in paragraphs 6, 7 and 8 above, Respondent did discriminate and is discriminating in regard to the hire or tenure or terms or conditions of employment of the employee named above, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (a), subsection (3) of the Act.

10. By the acts described in paragraphs 6, 7, 8 and 9 above, and by each of said acts, Respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (a), subsection (1) of the Act.

11. The activities of Respondent described in paragraphs 6, 7, 8, 9 and 10 above, occurring in connection with the operations of Respondent described in paragraphs 2, 3, and 4 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

12. The activities of Respondent, as set forth in paragraphs 6, 7, 8, 9, 10 and 11 above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a), subsections (1) and (3), and Section 2, subsections (6) and (7) of the Act.

Please take notice that on the 15th day of March 1960, at 10:00 a.m., PST, in Hearing Room No. 1, on the Mezzanine Floor, 849 South Broadway, Los An-

geles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, this 18th day of February 1960, issues this Complaint and Notice of Hearing against South Bay Daily Breeze, the Respondent herein.

/s/ RALPH E. KENNEDY,
Regional Director
National Labor Relations Board
Twenty-First Region
849 South Broadway
Los Angeles 14, California

Admitted in Evidence March 15, 1960.

[Title of Board and Cause.]

ANSWER OF RESPONDENT SOUTHERN CALIFORNIA ASSOCIATED NEWSPAPERS, A CORPORATION DOING BUSINESS AS SOUTH BAY DAILY BREEZE

Respondent, Southern California Associated Newspapers, a corporation doing business as South Bay Daily Breeze, for answer to the complaint herein admits, denies and alleges as follows:

1. Denies each and every allegation of paragraph 5, except alleges as follows: Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph.

2. Denies each and every allegation of paragraphs 6, 7, 8, 9, 10, 11 and 12.

Wherefore, this respondent prays that the complaint be dismissed.

O'MELVENY & MYERS

/s/ By CHARLES G. BAKALY, Jr.
Attorneys for Respondent,
Southern California Associated
Newspapers, a corporation doing
business as South Bay Daily Breeze

Affidavit of Service by Mail Attached.

Admitted in Evidence March 15, 1960.

[Title of Board and Cause.]

INTERMEDIATE REPORT AND
RECOMMENDED ORDER

Statement of the Case

This matter was tried in Los Angeles, California, on March 15 and 17, 1960. The question presented is whether one David Clark's termination from Respondent's employ was a violation of Section 8(a)(3) of the Act.

Upon the entire record, consideration of briefs submitted by General Counsel and Respondent, and from my observation of the witnesses, I make the following:

Findings of Fact

I. The business of the Company

The complaint alleges, the answer admits, and it is found Respondent is engaged in commerce and in a business affecting commerce within the meaning of the Act. Its business is that of a publisher in Redondo Beach, California, in the Los Angeles metropolitan area.¹

¹Respondent is engaged in the business of publishing, selling and distributing newspapers including a daily newspaper called the South Bay Daily Breeze. Respondent holds membership in and subscribes to Interstate News Services, to wit, Associated Press and United Press International and publishes nationally syndicated features and advertises nationally sold products. Respondent in the course of operating such business received a gross annual income in excess of \$200,000, and its purchases of newsprint originating outside the State of California exceeded \$10,000 in value in 1959.

II. The labor organization involved

Mailers Union No. 9, International Typographical Union AFL-CIO, herein called the Union is a labor organization within the meaning of the Act.²

III. The alleged unfair labor practices

A. Background and events

David Clark, the charging party, a youth 19 years of age was previously employed by Respondent for about 3 years commencing in 1954. At that time he was delivering newspapers to homes under the supervision of district managers of Respondent including Harold Collins, who is presently the circulation manager. After approximately a year's absence he returned to work in Respondent's mailroom as a fly boy. The fly boy in the newspaper business is apparently someone who is engaged in taking the newspapers from the press or from the conveyer leading from the press prior to further handling. While Collins knew David as a newspaper carrier he became interested in him and he testified that he was instrumental in obtaining David's job as a fly boy with Respondent. The record reflects that David and Collins were good friends as well as Collins and David's father Bernard Clark. A topic of frequent conversation among all three was the best way in which David could enhance his prospect for a career by attending school. At Bernard Clark's request Collins urged David on many occasions to complete his education.

²Although the status of the labor organization was put in issue by the answer, Respondent stipulated to the status of the labor organization during the course of the hearing.

David Clark last worked for Respondent on or about December 19, 1959, a Saturday, except for a brief period on December 21. At the time of his termination he was working in the mailroom of Respondent and the record reflects that on weekends two other teenage boys also were employed in the mailroom. The seven district managers who were in charge of the boys that delivered papers to homes also performed some of the mailroom work that in other newspapers was ordinarily performed by members of the mailers union. David had received periodic raises in pay during his year and a half as a fly boy, and on December 19, 1959 his rate of pay was \$1.50 an hour. On this day his hourly rate was increased to \$1.67 an hour. He was paid at this rate for December 21 and for three extra days which he did not work.

Bernard Clark testified that he was dissatisfied with David's rate of pay and with the long hours that he worked on Saturdays and that he was aware of the fact that union mailers in the Los Angeles area were earning in excess of \$3 an hour. He was a member of a printers local of the International Typographical Union. On or about November 1, 1959 he approached an official of the mailers local of the same union and complained, according to him about the long hours David and the two other teenage boys were working on weekends. As a result of this a Mr. Fred Leathem, an organizer for the Union, came to the Clarks' residence on Tuesday, December 15, 1959 in the morning. On this occasion in the presence of his father, David was initiated into the Union as a journeyman. Leathem testified that David was not a qualified journeyman

and that he only had to pay an initiation fee of \$10 rather than the usual one of \$105. He explained this deviation from normal practice of eliminating an apprenticeship period and accepting a reduced initiation fee as occurring in connection with organizing new plants.

On December 24, 1959 David, in a signed affidavit given to a Board agent, recited that Respondent had seven full-time and seven part-time mailers. Leathem and David Clark both testified David had told Leathem that David and two other teenage boys were the only employees in the mailroom. At other points the record reflects that David testified that Dennis Daines was a mailer at least until December 15, and there were two employees who were union mailers who worked for Respondent on Wednesday nights. The record is clear that Leathem did not inquire from David as to the identity or addresses of the two teenage boys who worked with David in the mailroom on weekends.

Bernard Clark who was present during this conversation at first testified that Leathem told David that it was a condition of being admitted to the Union that David keep his fly boy job with Respondent. He then changed his testimony and stated that the only condition that Leathem mentioned was that David stay on with the Daily Breeze. Leathem testified that he told David that if he lost his job through no fault of his own, the Union would get him another part-time job. At this time the Clarks knew that journeyman mailers were receiving in excess of three (\$3) dollars an hour in the Los Angeles area.

Collins approached David the following Friday which was December 18, and inquired whether he had been contacted by the Union and David informed him that he had. However, David told him that he did not have a Union card. David's affidavit to the Board dated December 24, 1959 reflects a statement that on December 19, 1959 he told Collins one of the reasons he could not accept a new job offered to him by Collins was because he had joined the Union. His testimony is to the contrary. According to Collins the reason he asked David on December 18 whether he had been contacted by the Union was because some printers had told him there were men around the building for the mailers union and asked David if he had been approached by them.

Collins, on December 19, offered David a job which would pay him \$1.67 an hour and would permit him to work more desirable hours on Saturdays. This raise in pay and shorter Saturday hours had been an objective of the Clarks for several months. The testimony of the Clarks that the increased cost of insurance and gasoline was stated to Collins as a reason for refusing the new job on December 19 and 21 is not credited. Collins testified that he did not recall mention of this in his discussions with David and his father. When the Clarks testified that neither inquired from Collins as to the basis of reimbursement for the use of David's car it was manifest that not only was this a fictitious reason for declining the new job but also it was not given to Collins as a reason.

In view of Bernard Clark's other testimony and the equivocal nature of his testimony with relation to his

conversation with an insurance agent in approximately June of 1959, no probative weight is given to his testimony that he had reason to believe increased insurance rates on David's car would eventuate if he used it in business based on this June 1959 conversation. At any rate, there is no basis in the record to find that the Clarks had a reasonable basis to believe David would not be reimbursed for any increased insurance costs.

David Clark was asked the following question referring to a conversation with Collins on Saturday, December 19 and gave the following answer:

Q. During the conversation during the 19th, Mr. Clark, did you give as a reason for not taking this job the fact that you were attempting to obtain a job as a mailer in Los Angeles where you could work two shifts a week with many less hours and make more money than you were making at the Daily Breeze?

A. No. On Monday I said that.

In his testimony at another point in the record he denies that he told Collins working in Los Angeles for more money was a reason for his refusing the new job offered him by Collins.

It is clear that on Monday, December 21, Collins made it clear to David that if he did not accept the new job he could no longer keep his job as fly boy. After David left the employ of Respondent on December 21 he went to work that evening as a journeyman mailer at approximately double the hourly pay he had earned while working for Respondent.

He also testified that the new job for David which he labeled a trainee had been approved by a Mr. Curry,

the publisher, on December 15, and although David was at work on December 16, 17, and 18 he did not tell him of the new job until the morning of December 19. He also testified that he had a discussion with Curry on the evening of the 18th. As a reason for not telling David previously about the new job, Collins stated that it was his practice to hand the man who received a raise his check at the end of the pay period and offer him congratulations. Respondent's pay period ended on a Friday, and David received his regular pay the following Tuesday. Collins testified on a Thursday and he stated he was going to inform two men on that day they were to receive increases when he gave them their checks. He also testified that Friday was the end of the pay period and Tuesday was the day the employees received their checks.

David Gagnon, an employee of Respondent, testified he was present at the conversation of December 19 between David and Collins. His testimony is credited that David did not state to Collins the reason he did not take the new job was because the car insurance would be too expensive. He also testified credibly that on December 21 Collins pointed out to David that the new job would be more compatible with his schooling and future career. His credited testimony was also to the effect that David told Collins that he could not take the new job with Respondent and that he would be working just a couple of nights a week for twenty four (\$24.00) dollars a night and that he would have more time for his studies.

Fred Leathem, an organizer for the Union, testified that his union was interested in organizing only employ-

ees who worked inside the mailroom of publishing establishments. However, a copy of a collective bargaining contract was introduced indicating that a bargaining unit of Mr. Leathem's local incorporated in a collective bargaining contract job descriptions including "conveying of newspapers by trucks anywhere in the plant." Respondent's brief cited another case in which another mailers local stipulated a bargaining unit which included in the job descriptions "all employees doing work pertaining to mailing including delivering papers to mailers, carriers, agents or newsboys." American Publishing Co., 121 NLRB 115. This would apparently cover the jobs of Respondent's district managers. It is found that the trainee job offered to David by Collins was a better job at increased pay and that it was the type of job David and his father had been trying to get for David with Respondent.

Discussion and Analysis

On the basis of the foregoing it is found that both Clarks and Collins, the principal actors, testified falsely to material facts. Leathem's testimony is open to suspicion also and is rejected insofar as it supports the testimony of the Clarks. Gagnon's testimony which was of minor significance is the only portion of the record that does not contain obvious errors or misstatements of fact.

Being unable to rely on the version of the main witnesses with respect to the events in question, findings will be made on what appears to be the most plausible hypothesis.

After Leathem's visit to the Clark home on Decem-

ber 15 he probably went to Respondent's plant and talked with some employees. News of this related to Collins induced him to ask David on December 18 as to whether he had been contacted. In view of the fact the record does not contain any indication that Leathem approached any official of Respondent on behalf of David it would appear that Leathem was under the impression from his initial contact with David that there were more mailers to be organized, perhaps seven full-time and seven part-time as David told the Board representative on December 24, 1959. Leathem's apparent lack of interest in the other two teenage boys who worked on weekends suggests that David was regarded as one of the purported full-time mailers. When Leathem visited the plant of Respondent he ascertained that there were no full-time mailers except David and either had no interest in or was unsuccessful in organizing the district managers who did some mailing work. In any event he never did approach management with respect to representing any of its employees. The Clarks' eagerness to have David earn more money for shorter hours probably led David to exaggerate the number of mailers employed by Respondent when talking to Leathem. It is clear that Collins offered David a job which was a better one and for more pay. It also seems clear that the reason David did not accept it was because of Leathem's assurance that if he lost his job through no fault of his own he could get a couple of nights' work a week at double the hourly rate. The objection with respect to the increased automobile expenses was invented to convince the Union he was being given a worse job because he had joined the Union.

This objection of increased auto costs was not conveyed to Collins by either of the Clarks. Although the job Collins offered David was substantially better and of the type he and his father had been trying to obtain for some months, the prospects of getting two nights' work at double the pay seemed more attractive and David declined the job offered by Collins.

Collins apparently mistakenly believed that giving David a better job and taking him out of the mailroom in some way would delay union organization of the mailroom. One of the anomalies of this record which is totally unexplained is that two union mailers whom Collins knew as such, worked for Respondent on Wednesday nights. In short it is found that Collins offered David a better job based on the belief that it might prevent David from being represented by the Union in Respondent's mailroom. The fact that David would not be permitted to continue his fly boy job along with the spurious reasons given by Collins for not telling David about the new job until December 19 after he learned David had been contacted by the Union on December 18 support this finding, as well as Collins' own testimony that Respondent's mailroom was not ready for a union.

In making a resolution as to whether unfair labor practices were committed by Respondent the following sections of the Act are pertinent.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activi-

ties for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

The General Counsel in his brief cites *Continental Oil Company v. N. L. R. B.*, 113 F. 2d 473 (C. A. 10) and *Southeastern Pipeline Co.*, 103 NLRB 341, for the proposition that transfer of an employee to another job may be an act of discrimination even though the job was better. An examination of those cases reveals the employees were transferred to less desirable jobs. Here David was offered a better job. Here the evidence preponderates that in David's new job with Respondent he could have remained a member of the Union and if the Union had so desired it could have attempted to represent him in collective bargaining. Accepting David's testimony that he was the only full-

time mailroom employee, I do not find that the offer to him of a better job in any way inhibited union organization or constituted conduct in any way proscribed by Section 8 of the Act. The fact that Collins mistakenly was under the belief that David's transfer might tend to impede union organization in the mailroom is not regarded as sufficient to establish an unfair labor practice in the context of the facts here presented. Respondent's action in offering a better job if anything would provide an example for encouraging union membership.

Conclusions of Law

Respondent is engaged in commerce and in activities affecting commerce within the meaning of the Act.

The Respondent has not engaged in unfair labor practices as alleged in the complaint.

Recommendation

It is recommended that the complaint be dismissed in its entirety.

Dated this 8 day of June 1960.

/s/ By EUGENE K. KENNEDY,
Trial Examiner

[Title of Board and Cause.]

DECISION AND ORDER

On June 8, 1960, Trial Examiner Eugene K. Kennedy issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and Respondent filed exceptions to the Intermediate Report and supporting briefs.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its power in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record, and hereby adopts the evidentiary findings of the Trial Examiner but not his conclusions or recommendations inconsistent with our decision herein.

As the record shows, the charging party, David Clark, was employed by the Respondent as a flyboy in the mailroom. His duties consisted of taking newspapers from a conveyor to the mailroom and there preparing them for further distribution. On or about December 15, 1959, Clark joined Mailers Local No. 9 of the International Typographical Union, AFL-CIO. On December 18, Circulation Manager Howard Collins inquired whether he had been contacted by the Union. Clark

informed Collins that he was a member of the Union. On the following day, Collins offered Clark a promotion to District Manager Trainee, a newly created position. Clark refused the new job, and was thereupon released by the Respondent, even though this required the Respondent to temporarily assign Clark's work to other employees for more than a month. When Clark returned to pick up his pay he had occasion to converse with Collins, at which time Collins made the statement that the mailroom was not yet ready for a union.

The Trial Examiner found that Collins believed taking Clark out of the mailroom would delay or impede Union organization, and that upon learning of Clark's Union membership Collins refused to permit him to continue his current job in the mailroom based on the belief that the new job might prevent him from being represented by the Union. We agree with these findings. However, the Trial Examiner recommended dismissal of the complaint, on the theory that the promotion offered Clark would not in fact have inhibited Union organization nor prevented Clark's continued representation by the Union.

We disagree with the Trial Examiner's theory, for reasons stated in recent decisions.¹ We adhere to the principle that changes in the terms and conditions of employment based upon the fact or absence of union membership or designation are discriminatory within the meaning of the Act. To decide otherwise would in

¹W. L. Rives Company, 125 NLRB 772; Combined Century Theaters, 123 NLRB 1759.

effect allow an employer who wished to get rid of an employee for anti-union reasons to do so by offering the employee an alternative of a promotion or a discharge, hardly within the contemplation of the Act.

We do not accept the Respondent's defense of economic motivation, as we find no support for it from any credited testimony. We likewise do not accept the Respondent's assertion in its brief that "the fact that the conduct was motivated by anti-union consideration is immaterial." Accordingly, we find that by questioning Clark about his Union membership, and by offering him a promotion and then precipitately discharging him with the anti-union motivation found by the Trial Examiner, the Respondent has violated Section 8 (a) (1) and (3) of the Act.

Remedy

Having found the Respondent has engaged and is engaging in unfair labor practices in violation of Section 8 (a) (1) and (3) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act. As Respondent has discriminatorily discharged and thereafter failed to reinstate Clark, we shall order that the Respondent offer him immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed. We shall also order that Respondent make Clark whole for any loss of pay he may have suffered by reason of the discrimination against him by payment of a sum of money equal to that which he would have earned as wages from the

date of such discrimination to the date reinstatement is offered; the backpay to be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289. In accordance with our usual practice, the backpay is to be tolled from the date of the Intermediate Report to the date of this Order. *Custom Underwear Mfg. Co.*, 108 NLRB 117. It will also be ordered that the Respondent preserve and upon request make available to the Board or its agents all pertinent records necessary to compute the amount of backpay due under this order.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act as amended, the National Labor Relations Board hereby orders that the Respondent, Southern California Associated Newspapers, d/b/a South Bay Daily Breeze, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Mailers Union No. 9, International Typographical Union, AFL-CIO, or any other labor organization of its employees, by discharging them or in any other manner discriminating in regard to their hire or tenure of employment or any terms or conditions of their employment;

(b) Interrogating its employees concerning their membership in or activities in behalf of said Union or any other labor organization in a manner constituting interference, restraint and coercion in violation of Section 8 (a) (1) of the Act, or in any other manner interfering with restraining or coercing its employees

in the exercise of their rights as guaranteed under Section 7 of the Act.

2. Take the following affirmative action, which it is found will effectuate the policies of the Act:

(a) Offer David Clark immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed and make him whole in the manner set forth in the "Remedy" section above;

(b) Post in its plant at Redondo Beach, California, copies of the notice attached hereto marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other rec-

²In the event that this Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by substituting for the words, "PURSUANT TO A DECISION AND ORDER" the words, "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER".

ords necessary to compute the amount of backpay due under the terms of this Order ;

(d) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C. Feb. 9, 1961.

[Seal] PHILIP RAY RODGERS,
 Member,
 JOHN H. FANNING,
 Member,
 ARTHUR A. KIMBALL,
 Member,
 National Labor Relations Board

Appendix

Notice to All Employees Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that :

We Will offer to David Clark immediate and full reinstatement to his former or substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and will make whole said employee for any loss of pay suffered as a result of our discrimination against him.

We Will Not interrogate our employees concerning their membership in or activities on behalf of Mailers

Local No. 9, International Typographical Union, AFL-CIO, or any other labor organization.

We Will Not in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the Union named above, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in the Act as amended.

All our employees are free to become or remain members of the above-named Union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

Southern California Associated Newspapers
d/b/a South Bay Daily Breeze
(Employer)

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

EXCEPTIONS OF RESPONDENT SOUTHERN
CALIFORNIA ASSOCIATED NEWSPA-
PERS TO THE INTERMEDIATE REPORT.

Pursuant to the provisions of the Labor Management Relations Act, 1947, as amended, and the Rules and Regulations of the National Labor Relations Board, particularly Section 102.46 thereof, Respondent Southern California Associated Newspapers hereby takes exception to the following omissions of the Trial Examiner and to the following findings of fact and conclusions of the Intermediate Report:

1. The finding that Collins apparently believed that giving David a better job and transferring him out of the mailroom in some way would delay union organization of the mailroom (I. R. p. 5, lines 29-31; p. 6, lines 12-14).

2. The finding that Collins offered David a better job based on the belief that it might prevent David from being represented by the Union in Respondent's mailroom (I. R. p. 5, lines 33-35).

3. The finding that the reasons given by Collins for not telling David about the new job until December 19 after he learned David had been contacted by the Union on December 18 were spurious (I. R. p. 5, lines 35-40).

4. The finding that Collins testified falsely to material facts (I. R. p. 4, lines 43-44).

5. The failure to find that the actions of the Respondent were not intended to discourage membership in the Union or to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

6. The failure to find that the actions of the Respondent were motivated by economic considerations.

7. All rulings and omissions of the Trial Examiner and all findings, conclusions and orders of the Intermediate Report upon which Exceptions 1 through 6 are based.

Dated: July 25, 1960.

Respectfully submitted,

O'MELVENY & MYERS

/s/ By CHARLES G. BAKALY, JR.

Attorneys for Respondent Southern
California Associated Newspapers.

Affidavit of Service by Mail Attached.

[Title of Board and Cause.]

EXCEPTIONS OF COUNSEL
FOR GENERAL COUNSEL

Comes now Counsel for the General Counsel and respectfully files these his Exceptions to the Intermediate Report and Recommended Order of Eugene K. Kennedy, Trial Examiner herein:

For that the Trial Examiner did find:

Page 6, Lines 9-17, Exception No. 1.—“Accepting David’s testimony that he was the only full-time mail-room employee, I do not find that the offer to him of a better job in any way inhibited union organization or constituted conduct in any way proscribed by Section 8 of the Act. The fact that Collins mistakenly was under the belief that David’s transfer might tend to impede union organization in the mailroom is not regarded as sufficient to establish an unfair labor practice in the context of the facts here presented. Respondent’s action in offering a better job if anything would provide an example for encouraging union membership.”

For that the Trial Examiner did conclude:

Page 6, Lines 24-25, Exception No. 2.—“Respondent has not engaged in unfair labor practices as alleged in the complaint.”

For that the Trial Examiner did recommend:

Page 6, Lines 29, Exception No. 3.—“. . . that the complaint be dismissed in its entirety.”

For that the Trial Examiner did not find:

Exception No. 4.—That the Respondent discharged David Clark on or about December 21, 1959, for the reasons that he joined or assisted the Union or engaged in other concerted activity for the purposes of collective bargaining or other mutual aid or protection.

Exception No. 5.—That the Respondent's offer of a specially created position to David Clark, when prompted by antiunion motives is discriminatory within the meaning of the Act.

For that the Trial Examiner did not conclude:

Exception No. 6.—That the acts described in Exception No. 2 and No. 3 alone, or that the acts described in Exception No. 2 in conjunction with the acts described in Exception No. 3, Respondent engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

For that the Trial Examiner did not recommend:

Exception No. 7.—That the Respondent be ordered to cease and desist from its unfair labor practices to reinstate David Clark to his former or substantially equivalent position and make him whole for any loss of pay suffered by him because of Respondent's unlawful action, and to post and maintain appropriate notices.

Respectfully submitted,

/s/ By DANIEL S. MARK

Counsel for the General Counsel
National Labor Relations Board

Dated at Los Angeles, California,
this 25th day of July 1960.

United States Court of Appeals
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

SOUTHERN CALIFORNIA ASSOCIATED
NEWSPAPERS, d/b/a SOUTH BAY DAILY,
BREEZE,

Respondent.

CERTIFICATE OF THE NATIONAL
LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.116, Rules and Regulations of the National Labor Relations Board—Series 8, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its records as Case No. 21-CA-3850. Such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner Eugene K. Kennedy on March 15

and 17, 1960, together with all exhibits introduced in evidence at the hearing.

2. Copy of Trial Examiner Kennedy's Intermediate Report and Recommended Order dated June 8, 1960. (Annexed to item 5 below.)

3. Respondent's exceptions to the Intermediate Report received July 25, 1960.

4. General Counsel's exceptions to the Intermediate Report received July 26, 1960.

5. Copy of Decision and Order issued by the National Labor Relations Board, on February 9, 1961, with Intermediate Report and Recommended Order attached.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 24th day of April, 1961.

[Seal]

/s/ OGDEN W. FIELDS

Executive Secretary

National Labor Relations Board

Before the National Labor Relations Board
Twenty-First Region

Case No. 21-CA-3850

SOUTHERN CALIFORNIA ASSOCIATED
NEWSPAPERS, A Corporation dba SOUTH
BAY DAILY BREEZE,

Respondent,

and

DAVID CLARK, An Individual,

Charging Party.

Hearing Room 1, 849 South Broadway, Los Angeles,
California. Tuesday, March 15, 1960.

Pursuant to notice, the above-entitled matter came
on for hearing at 10:00 o'clock, a.m.

Before:

Eugene Kennedy, Trial Examiner.

Appearances:

Daniel S. Mark, Esq., 849 South Broadway, Los An-
geles, California, representing the General Counsel of
the Twenty-First Region. O'Melveny & Myers by
Charles G. Bakaly, Jr., 433 South Spring Street, Los
Angeles, California, representing Respondent. [1]*

* * * * *

PROCEEDINGS

Trial Examiner Kennedy: The hearing will be in
order.

*Page numbers appearing at top of page of Original
Transcript of Record.

This is a formal hearing in the matter of South Bay Daily Breeze, Case Docket No. 21-CA-3850.

The Trial Examiner conducting the hearing is Eugene Kennedy.

I will ask counsel participating to state their names and appearances for the record, if they will, please.

Mr. Mark: Appearing for the Counsel for the General Counsel, Daniel S. Mark, 849 South Broadway, Room 600, Los Angeles, California.

Mr. Bakaly: For the Respondent, O'Melveny & Myers, by Charles G. Bakaly, Jr.

I might say at this time, Mr. Examiner, that the correct name of the Respondent is Southern California Associated Newspapers, a corporation doing business as South Bay Daily Breeze.

For the purposes here, it is perfectly all right with us to refer to it as the South Bay Daily Breeze throughout the hearing.

Trial Examiner: The record will reflect that.

I have not seen the pleadings yet, so if there is a problem there, we will come to it later.

Mr. Bakaly: I don't think it will be any problem.

Trial Examiner: Thank you. [3]

I think the only thing I will remind counsel is that obviously if there are written exhibits, why the Board rules require that they will be submitted in duplicate.

Do you have the formal papers, Mr. Mark?

Mr. Mark: Yes.

Mr. Trial Examiner, counsel for the General Counsel would like to move for the admission of the ex-

hibits, the following formal exhibits that I shall ask the reporter to mark for identification as:

General Counsel's Exhibit 1-A a charge filed by David Clark, an individual filed on December 24, 1959.

(Thereupon, the papers above-referred to were marked General Counsel's Exhibit No. 1-A for identification.)

Mr. Mark: As General Counsel's Exhibit 1-B, notice of filing of the charge with postal card return receipts attached, dated December 28, 1959.

(Thereupon, the papers above-referred to were marked General Counsel's Exhibit 1-B for identification.)

Mr. Mark: As Exhibit 1-C, the complaint and notice of hearing, dated February 18, 1960.

(Thereupon, the papers above-referred to were marked General Counsel's Exhibit No. 1-C for identification.)

Mr. Mark: As Exhibit 1-D, the affidavit of service of the complaint and notice of hearing with postal card return receipts attached, dated February 18, 1960. [4]

(Thereupon, the papers above-referred to were marked General Counsel's Exhibit No. 1-D for identification.)

Mr. Mark: As Exhibit 1-E, the answer of the respondent with affidavit of service attached, dated February 29, 1960.

(Thereupon, the papers above-referred to were marked General Counsel's Exhibit No. 1-E for identification.)

Mr. Mark: I will show these to respondent's counsel.

I would like to move for their receipt into evidence.

Mr. Bakaly: No objection.

Trial Examiner: They will be received as General Counsel's Exhibit 1 with the sub-divisions noted.

(The documents heretofore marked General Counsel's Exhibit 1-A thru -E for identification, were received in evidence.)

Trial Examiner: If you will indulge me, I am going to take a brief look at the pleadings. We will just take a five-minute recess.

(Short recess.)

Trial Examiner: On the record.

Mr. Mark, proceed, please.

Mr. Mark: At this time, Mr. Trial Examiner, I would like to move to amend the complaint in the following particulars, and that is the name of the respondent to read properly Southern California Associated Newspapers, a corporation doing business as South Bay Daily Breeze. [5]

Mr. Bakaly: No objection.

Trial Examiner: I notice all of the captions include the respondent as South Bay Daily Breeze except the respondent follows the caption with another heading to show the whole title.

Well, let the record show the complaint may be amended in accordance with the wording that the General Counsel stated. If the name weren't so long, I would suggest that we amend the complaint on its face, but I am not sure that it would be feasible, and of course, it will appear in the transcript. I wonder if you could just prepare a title page showing the amend-

ment to the complaint with that name which we can put in the formal exhibits as the next sub-division.

Mr. Mark: Certainly, I can arrange that.

Trial Examiner: With respect to the transcript the motion to amend the complaint should be reflected on the title page of the transcript. I would like the reporter to make a note of that. The title of the hearing that I indicated when hearing opened was not the whole entire title.

Go ahead, Mr. Mark.

Mr. Mark: I would like to offer the following stipulation: That Mailers Union No. 9, International Typographical Union, AFL-CIO is a labor organization within the meaning of Section 2, Sub-section 5 of the Act.

Mr. Bakaly: So stipulated. [6]

Mr. Mark: At this time, the counsel for the General Counsel would like to call as its first witness David Clark.

DAVID CLARK

a witness called by and on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mark): Mr. Clark, would you state your full name for the purposes of the record, please?

A. David Guy Clark.

Q. How old are you, David?

A. Nineteen.

Q. What is your present occupation?

A. I am a mailer.

(Testimony of David Clark.)

Q. I beg your pardon?

A. A mailer.

Q. Would you please speak up louder?

A. Okay.

Q. Are you presently employed?

A. Well, not at any one place, definitely.

Q. What is the nature of your occupation?

A. Well, I would like—I work at a, you know, newspaper, you know, mostly mailing work.

Q. In the course of the past year, were you employed by the South Bay Daily Breeze? A. Yes.

[7]

Mr. Mark: May we go off the record?

Trial Examiner: Yes.

(Discussion off the record.)

Trial Examiner: On the record.

I might state that in an off-the-record discussion, counsel indicated that when reference is made to the Daily Breeze or the South Bay Daily Breeze, that that reference is directed to the respondent involved here.

All right, Mr. Mark.

Q. (By Mr. Mark): When were you employed by the Daily Breeze, David?

A. I was first employed on—let's see. I think it was July 4th, 1958.

Q. How long did you work there?

A. It must have been about a year and a half, maybe a little more.

Q. Do you recall what day it was that you left the South Bay Daily Breeze?

(Testimony of David Clark.)

A. Let's see. It was the Monday before Christmas. It would be the 20th or the 21st or something like that.

Trial Examiner: 1959?

The Witness: '59, yes.

Q. (By Mr. Mark): What was your position with the South Bay Daily Breeze?

A. I was a flyboy. [8]

Q. Could you describe your job duties as a flyboy, please?

A. Well, my main duty was to fly the press or take the papers off the press so they could be tied up, but also made up the wrappers and mail galleys and that's about it.

Q. Was there one particular location in which you spent more time than any other? A. Yes.

Q. What is that? A. The mail room.

Q. Under whose supervision did you work?

A. Howard Collins.

Mr. Mark: May we have a stipulation here, please, as to the position of Mr. Collins? I believe he was the circulation manager for the South Bay Daily Breeze and had supervisory duties under Section 11, Sub-section 2 of the Labor Relations Management Act.

Mr. Bakaly: May I have just a moment, Mr. Examiner. This stipulation was not discussed ahead of time.

Trial Examiner: Certainly. We will be off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Let the record reflect whatever Mr. Bakaly's reac-

(Testimony of David Clark.)

tions are to the proposed stipulation with respect to this supervisory character of Mr. Collins. [9]

Mr. Bakaly: The respondent will stipulate that Mr. Collins was on December 21, 1959, prior thereto and is now a supervisor within the meaning of the Act.

Trial Examiner: Thank you.

Q. (By Mr. Mark): Dave, in the course of your employment at South Bay Daily Breeze, did you ever join a union? A. Yes.

Q. What union was that?

A. Mailers No. 9.

Q. When did you join the union?

A. Let's see. It was Tuesday. I don't know. I don't know. The 14th or 15th of December, 1959.

Q. Subsequent to joining the union, did you have any conversation with Mr. Collins regarding your joining the union?

A. Prior, is that what you said?

Q. Subsequent to joining the union. Subsequent to December 14th.

Trial Examiner: After you joined the union.

The Witness: Oh, yes.

Q. (By Mr. Mark): Do you recall when this conversation took place?

A. Well, Friday before Christmas. That's the first one. I—

Q. I think that is Friday, December 18th that you are referring to. Is that correct, Friday, December 18th? A. Yes. [10]

Q. The Friday before Christmas. Where did this conversation take place? A. In the mail room.

(Testimony of David Clark.)

Q. Do you recall what time of day?

A. It must have been around, somewhere around 4:30, I imagine.

Q. 4:30 in the afternoon or morning?

A. In the afternoon.

Q. Was there anyone present at this conversation?

A. Just Howard and myself.

Q. Howard is Howard Collins?

A. Howard Collins, yes.

Q. Could you tell us what Mr. Collins said to you?

A. Well, just, he wanted to know if I had been contacted by the union, and I told him yes that I had and he asked me, you know, that they wanted to know, you know, and I told him—they wanted to know about the paper, what the circulation was, the number of people that worked there and if the rest of the plant was union or not, and that was about it; and then we talked a little bit, and he asked me what I thought about it and I said, you know, a good deal; and he asked if I had a card, and I told him that I did not.

Q. He asked you if you had what?

A. A card, you know, union card.

Q. Your answer was— A. No. [11]

Q. As best as you can recall, is that the end of the conversation?

A. Yes. As much as I can remember. We might have said something else, a little something, but I don't—

Q. Is that the only conversation which took place with regard to the union on December 18th?

A. Yes.

Q. That is Friday? A. Yes.

(Testimony of David Clark.)

Q. Were you ever offered any other position with South Bay Daily Breeze? A. Yes.

Q. What position was that?

A. As trainee position in the circulation department.

Q. By whom were you offered this position?

A. Howard Collins.

Q. When did this offer take place?

A. Saturday. It would be December the 19th.

Q. Was that the day following your conversation?

A. Yes. The day following the conversation.

Q. Now, at this particular time, when did this offer take place? A. It was—

Mr. Bakaly: Excuse me. I think maybe counsel misspoke. In any event, I object to when the offer took place as calling [12] for a conclusion. What we are interested in is the conversation. I did not object earlier because they were foundational questions, and I think the testimony of the witness should be restricted to what was said by him and what was said by Mr. Collins.

Trial Examiner: Yes. Who said what to whom in the nearest order as you can remember, Mr. Clark.

Q. (By Mr. Mark): On Saturday; December 19th.

Trial Examiner: If there was any interchange of words, what happened?

The Witness: On Saturday?

Trial Examiner: Yes.

The Witness: Well, he just, I don't know. When I first went in to work he asked me to go across the

(Testimony of David Clark.)

street to the Spanish Inn to have a cup of coffee with him. I said, "Okay."

We went over there, and he said that he had been working on this new job for quite awhile and had finally come up, you know, come through and it was open to me.

I didn't know, he said because I have the experience, you know. He explained the job to me, what its function were and the pay, and I don't know, a few things like that, you know, and I told him I wasn't sure, you know. I would like to talk to my dad about it, but I wasn't, because, you know, the gasoline mileage and insurance, and you know, it would be pretty high. The way I explained the job, using my truck. [13]

Well, he said, "phone up your dad and he can come down and I will talk to him."

And I said—

Q. (By Mr. Mark): Well, to recap a little bit here, what was the aim of the position that you were offered?

A. Trainee is all. I don't know. Circulation trainee, I guess, that is what you call it.

Q. And you said this involved the use of your car. Do you own a truck? A. Yes.

Q. What type of truck is it?

A. It is a Ford, '57 Ford.

Q. At the time that Mr. Collins told you about the trainee job, did he tell you how much it paid?

A. Yes. He told me that it would pay—yes, \$55.00 a week for—I don't know, 30 hours or something like

Q. At that time what was your pay?

(Testimony of David Clark.)

A. At the present time I was making 60.00 a week.

Q. For how many hours?

A. Four—40 and—

Q. Did Mr. Collins say that you could stay as a flyboy if you didn't accept the position?

A. No. He said that he would have to get somebody else so they could start building trainees. You know, a series of trainees, that for a person to be a trainee, they should start [14] as a flyboy and work on up to the trainee position; and that's about it.

Q. Did you subsequently call your father and inform him of this offer of the trainee position?

A. Yes, I did.

Q. To the best of your knowledge, did your father talk to Mr. Collins that day? A. Yes.

Q. Did you have any further conversation with Mr. Collins about the trainee position?

A. On Saturday?

Q. On Saturday. A. No.

Trial Examiner: The same day.

Q. (By Mr. Mark): So that your conversation ended on Saturday morning? A. Yes.

Q. Is that correct? A. Yes.

Q. Did you have any other, further conversation, regarding a trainee position on any other day?

A. Yes.

Q. When was this?

A. On Monday following the Saturday.

Q. On that day did you go to work that day? [15]

A. Yes.

(Testimony of David Clark.)

Q. Where was Mr. Collins at the time this conversation took place?

A. In his office of the Daily Breeze.

Q. Was anyone present? A. No.

Q. What time of day was that?

A. I don't know. It must have been—I don't know. Pretty close to noon or something like that. I am not real sure of the time.

Q. At that time, could you relate the conversation to us, please?

A. I was down in the mail room. I was doing some mail galley, and I was told, you know, Howard wanted to see me.

Q. Who was it that told you?

A. I don't know. It must have been Leo Gagnon or Dennis Daines. I don't remember. It was one of the two, and—

Q. Who is Leo Gagnon?

A. He is a man that works down in the circulation department.

Q. And Mr. Daines?

A. The same. He is an assistant circulation manager I think now.

Q. Did you go up to see Mr. Collins?

A. Yes.

Q. What did Mr. Collins say? [16]

A. Well, he wanted to know if I had made up my mind about the job. I told him "yes."

Mr. Bakaly: Just a minute. I am sorry, but I will have to object until we have a little more foundation as to who was present and the time.

(Testimony of David Clark.)

Mr. Mark: I think—

Trial Examiner: Well, I think probably it is not entirely clear, Mr. Mark, and also I am going to make the request, directed to you, Mr. Clark, if you will make a special effort at least on this occasion to speak perhaps a little more slowly.

The Witness: Okay.

Trial Examiner: And to be as careful as you can in trying to remember what happened and who said what to whom, including what Mr. Mark is going to ask you.

Go ahead, Mr. Mark.

Q. (By Mr. Mark): Now, this conversation between you and Mr. Collins on Monday, December 21st, at what time did this take place?

A. About 12:00 o'clock noon.

Q. Was anybody present during the course of this conversation? A. No.

Q. Where did this conversation take place?

A. In his office.

Q. At that time, what did Mr. Collins say to you?

A. Well, he asked me if I had made up my mind about the job, [17] and I told him:

“Yes. It was the same as it was Saturday. You know, I couldn't take.”

Q. What did Mr. Collins say to that?

A. Well, he said that he would have to get somebody new, you know, as a flyboy so they could start training them as a flyboy and then work up as a trainee position, you know, like the new job that was offered.

(Testimony of David Clark.)

Q. Did Mr. Collins say that he had anybody in mind?

A. Yes. He said he had. I don't know two, three boys, in mind.

Q. Did you continue working that day?

A. Well, I worked for, about a half hour more. I went down and I asked him if you wanted me to stay around, you know, for the rest of the day. He said, "No, it won't be necessary;" and then I said, "do you want me to finish the mail galley," and he said, "yes. You can do that, and Leo can go down and see how you do it."

I said, "Okay."

And I finished the mail galleys and I left.

Q. In the course of this conversation, was there any mention made about the union or your union membership? This was on Monday, December 21st?

A. I don't remember exactly. I couldn't say for sure.

Q. Did you tell Mr. Collins the reasons why you couldn't [18] accept the job?

A. Yes. I told him, well, insurance for one and the gas mileage was another.

Q. What did Mr. Collins say about this?

A. Well, insurance, I don't—I don't remember him saying anything about the insurance, but on the gas mileage he said, "No. We might be able to work out gas mileage money."

And—

Mr. Bakaly: I didn't get the answer. Could I have that answer read back, please, Mr. Trial Examiner?

(Testimony of David Clark.)

Trial Examiner: Yes.

(Record read.)

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Mark): What did you say after Mr. Collins told you he would probably be able to work out something as far as gas mileage money?

A. I said, "Well, I still couldn't take it."

You know that was it.

Q. What did he say?

A. He says, "Well, I am sorry, you know, I hate to see you go."

Q. Did Mr. Collins at any time tell you that he was letting you go? [19]

A. Yes. He said he would have to let me go to get, bring somebody new in for—

Q. Was it at this time that you asked Mr. Collins whether it was necessary for you to stay around?

A. Yes. I asked him if he wanted me to stay around and help, you know, the new boy, if he got one in that day?

Q. And you say to the best of your recollection there was no mention about the union at this time?

A. Not that I can remember, no.

Q. Did you return to the South Bay Daily Breeze at any time after that? A. Yes, on Tuesday.

Q. Which Tuesday is this?

A. I don't know. December 22nd.

Q. Is this the day after? A. Yes.

(Testimony of David Clark.)

Q. On that day, what was the purpose of your return?
A. I wanted to pick up a check.

Q. Did you see Mr. Collins on that day?

A. Yes.

Q. Did you talk to Mr. Collins on that day?

A. Yes, I did.

Q. What time were you at the Daily Breeze?

A. Roughly, around 3:00 o'clock in the afternoon.

Q. Where did you see Mr. Collins? [20]

A. In his office.

Q. Was there anybody present in the office at the time you saw him?

A. Well, I don't know. Dennis Daines—I can't be sure, but I think he was in the office for about the first minute or so. Might have just walked in and walked out.

Q. Did you have a conversation with Mr. Collins at that time.
A. Yes.

Q. Could you tell that conversation, please?

A. Well, he asked me if I had changed my mind, and I told him no, and I just wanted to, you know, to get my check; you know.

He said, "We will make it up stairs, you know."

So, I said, "Okay."

So we talked there and talked awhile. I don't know what came before this. I just remember—

Trial Examiner: Let us—

Q. (By Mr. Mark): Hold it right there. Was there any mention made in this conversation about the union?

A. Yes.

(Testimony of David Clark.)

Q. Did you bring the subject up, or did Mr. Collins? A. I think Howard did.

Q. What did he say?

A. He says he thought that some day the union would come into the paper down there, but right now, he didn't feel they [21] were big enough, and he thought that he was paying his men about union scale.

Q. Was that the end of the conversation at that time, or was there anything further said about the union?

A. I don't know. This was about all that was said about the union, I think.

Q. Did Mr. Collins ask you where you had signed up with the union?

Mr. Bakaly: I object as leading, Mr. Examiner. He is asking him if he can recall anything else about the union, and he can not. This question is leading and suggestive.

Trial Examiner: Well, there comes a time when the memory is exhausted, and you have to focalize it. I am not sure that—

I will sustain it at this point, and I will ask you to have the record perfectly clear that before you spotlight the particular topic, that you make sure he can not remember anything else, Mr. Mark.

Let me ask Mr. Clark this. Right as of now, and we have a moment or two, can you remember anything else that was said by you or by Mr. Collins on this Tuesday that you were just telling us about?

The Witness: No. I can't. I can't remember anything more.

(Testimony of David Clark.)

Trial Examiner: All right, go ahead, Mr. Mark.

Mr. Mark: I would like at this time to have the reporter [22] mark for identification as General Counsel's Exhibit No. 2, an affidavit of David Clark, attested to the 24th of December, 1959, before Abraham Siegel, attorney, National Labor Relations Board.

(Thereupon, the papers above-referred to were marked General Counsel's Exhibit No. 2 for identification.)

Q. (By Mr. Mark): David, I would like to show you this.

Mr. Mark: Would you like to see this, counsel?

Mr. Bakaly: I will see it in a minute.

Q. (By Mr. Mark): I would like to show you this particular document and call your attention to Page 6 and the paragraph there and ask you to read the first paragraph.

Mr. Bakaly: To himself?

Mr. Mark: To himself.

Q. (By Mr. Mark): Now that you have refreshed your memory, do you recall if there was anything else said?

Trial Examiner: Well—

The Witness: Yes.

Trial Examiner: Excuse me. I think it would be more appropriate to have the record show first of all that you did read what Mr. Mark handed you.

The Witness: Yes.

Trial Examiner: In reading that, did that serve to help you remember something else that might have been said?

The Witness: Yes. [23]

(Testimony of David Clark.)

Trial Examiner: It did?

The Witness: Yes.

Trial Examiner: All right, tell us.

The Witness: Well, I remember now the last—he asked me where I had signed up, and he asked me if I had signed up at the press or not, and I told him no. It was at the house.

Q. (By Mr. Mark): At the where?

A. At my house.

Q. No. He asked you where you had—whether you had signed up where? A. At the plant.

Q. At the plant. All right.

Mr. Mark: Might I just have a few minutes, Mr. Trial Examiner.

Trial Examiner: All right. We will take a brief recess before going on.

(Short recess.)

Trial Examiner: On the record.

Mr. Mark: May the record reflect that during the recess, respondent's counsel requested, and the General Counsel provided the statement which was shown to Mr. Clark as General Counsel's Exhibit No. 2.

Trial Examiner: Very well.

Mr. Mark: I have no further questions.

Cross-Examination [24]

Q. (By Mr. Bakaly): Mr. Clark, you have been shown General Counsel's Exhibit No. 2 which is a statement that was made by you to the representative of the National Labor Relations Board on the 24th of December, 1959.

Have you made any other statements, written state-

(Testimony of David Clark.)

ments, to representatives of the National Labor Relations Board? A. Yes.

Mr. Bakaly: At this time, Mr. Examiner, I request that the General Counsel be instructed to make available to the respondent, all statements made by this witness to a representative of the National Labor Relations Board, and I request a recess in which to examine them. I have almost completed examining this one in the last recess.

Trial Examiner: Are the other ones very long?

Mr. Mark: No. The other ones—there is a total of five pages.

Trial Examiner: Well, I think that is fair enough. We will take a brief recess.

Mr. Mark: General Counsel has no objection.

(Short recess.)

Trial Examiner: On the record.

Q. (By Mr. Bakaly): Mr. Clark, I believe you testified on your direct examination to a conversation on December 18, 1959, with Mr. Collins, is that correct?

A. That is the Friday. Would that be it? [25]

Q. Yes, that was Friday.

A. Yes, that is right.

Q. During that conversation, I believe you testified that you told him that you had joined the union?

A. No. He asked me if I had been contacted by the union, and I didn't testify that I joined the union. He asked me—

Q. What did you tell him?

A. He asked me if I had the card and I said no. [26]

(Testimony of David Clark.)

Q. Did you tell him that you had joined the union?

A. No.

Q. I show you General Counsel's Exhibit 2 on page 2, about the 10th or 11th line and ask you to read that whole paragraph if you will to yourself.

Trial Examiner: That has been marked, but it has not been offered as yet as I recall.

Mr. Mark: That is right.

Mr. Bakaly: That is right.

The Witness: When I says, "Well, what do you think of it—"

Trial Examiner: Excuse me. All that Mr. Bakaly asked you is to read it.

The Witness: Okay.

Trial Examiner: Now, have you read it, Mr. Clark?

The Witness: Yes. I read it.

Q. (By Mr. Bakaly): Does it refresh your recollection that on the statement you stated that during the conversation of December 18th, you told Mr. Collins that you had joined the union? A. No.

Mr. Mark: I'm going to have to object. Mr. Clark has already testified both in answer to Mr. Bakaly's question and originally in his testimony that he said that he had gotten a card, and now I think the question is improperly phrased [27] to mean—

Mr. Bakaly: This is the cross-examination, Counsel.

Trial Examiner: If it does not refresh his recollection, it doesn't, Mr. Mark. That is about where we stand at this point, and he said it doesn't, so we will go on from there.

Mr. Bakaly: I would like to read into the record, if I might, the paragraph.

(Testimony of David Clark.)

Trial Examiner: Is this being offered for impeachment?

Mr. Bakaly: Yes.

Trial Examiner: Rather than offering it—

Mr. Bakaly: I don't see any need to offer the whole thing.

“On or about December 18, 1959, Collins asked me if the union had approached me. I replied that it had. Collins asked, ‘What did they ask you?’ and I told him the union man had asked what the paper’s circulation was and whether the plant was union. Collins then asked, ‘Well, what do you think of it?’ and I replied that I had joined. Collins then asked whether I had card, and I told him that I did not need it. This conversation took place in the mailroom about 5:00 p.m., quitting time.”

Q. (By Mr. Bakaly): Now, I show you, and I would like to have marked as Respondent’s 1 for identification a statement dated December 24, 1959, which has previously been handed to me by the General Counsel. This is a copy. [28-29]

What is your pleasure, Mr. Examiner? Do you want the original?

Trial Examiner: The copy is all right if it is legible.

Mr. Bakaly: It is legible, but I would like it back. That is the only copy I have. Do you have an extra copy?

Mr. Mark: I can supply extra copies.

(Thereupon the document above referred to was marked Respondent’s Exhibit 1 for identification.)

Q. (By Mr. Bakaly): Now, I show you, Respond-

(Testimony of David Clark.)

ent's 1, and ask you if this is a statement made by you on or about—I was in error, on or about the 22nd day of January, 1960, to a representative of the National Labor Relations Board?

A. Yes, that is right. I did not tell him that I joined.

Q. I'm just asking you if this is the statement, a copy of the statement that you gave to the Board?

A. That is right, yes.

Q. Now, I would like—

Trial Examiner: Is your signature on that, Mr. Clark?

The Witness: I think it is.

Q. (By Mr. Bakaly): Is that your signature, Mr. Clark? A. Yes.

Q. According to the signature page, page 2?

A. Yes, that is right.

Mr. Bakaly: I would like to read the first part of the second paragraph of this affidavit, Mr. Examiner.
[30]

Trial Examiner: I think there may be a little question in the record. Mr. Clark indicated possibly from his statement that he did not say something in there, so I think we ought to make sure.

Mr. Bakaly: Well, I'm reading the same thing. I think I am going to read this paragraph, the second paragraph, and that is what he was referring to, wasn't it, Mr. Clark?

Trial Examiner: Is that a statement that you made on that date, Mr. Clark?

The Witness: Yes, yes.

(Testimony of David Clark.)

Q. (By Mr. Bakaly): It is?

A. Yes, sir. I said all the statements I made were like that.

Q. "During my conversation with Mr. Collins on or about December 18, 1959, I did not tell him I had joined the union. He asked me what I thought about the union and I said I thought it was a pretty good deal. He asked whether I had my card yet and I replied 'no.' He did not ask me whether I had joined nor did he ask to see my card."

Q. (By Mr. Bakaly): Now, isn't it true, Mr. Clark, that on one occasion you stated that you told Mr. Collins that you had joined the union, and on another occasion you told him that—you told the National Labor Relations Board that you did not tell him that you had joined the union; and isn't it the truth that you really don't remember what you said to him [31] on December 18?

A. I remember it, as a pretty good deal, I asked him the one that said I did, the question before it says, he asked me what I thought. Isn't that what it says, that one?

Q. That is right.

A. And it says well I joined—well, I said I thought it was a pretty good deal. That's what I said.

Q. I don't believe you have answered the question.

Trial Examiner: I think it is a compound question. Would you break it up, Mr. Bakaly?

Q. (By Mr. Bakaly): The record shows that in General Counsel's Exhibit No. 2, you stated that you told Collins that you had joined the union on Decmeber

(Testimony of David Clark.)

18; and in Respondent's Exhibit 1, a second statement made to the Board, you told the Board that you did not tell Collins that you had joined the union.

Isn't it true that you don't remember now exactly what you told Collins on or about December 18?

A. Yes, I remember.

Q. When were you first associated with the Daily Breeze, Mr. Clark?

A. It was July 4, 1958, I believe.

Q. Prior to that time, were you not a carrier?

A. That is right, yes.

Q. You were associated with the Daily Breeze at that time, [32] were you not?

A. Oh, yes, yes.

Q. When did your association as a carrier begin?

A. I don't know. It must have been 1955 or '56. I don't—maybe earlier than that.

Q. About—

A. It could have been '54. I don't know.

Q. About five or six years?

A. Yes. I don't—

Q. Who employed you or who got you the job as a carrier? A. Howard signed me up.

Trial Examiner: That is Mr. Collins?

The Witness: Mr. Collins.

Q. (By Mr. Bakaly): And you were employed as a carrier until sometime in 1958, July of 1958 I believe you testified to?

A. No. I, I quit my route before that. I didn't have a route for a while.

(Testimony of David Clark.)

Q. You had no association with the paper?

A. Yes.

Q. For a while? A. Yes.

Q. For about how long didn't you have any association?

A. I would say for about a year. Maybe. I don't know exactly. I don't remember exactly.

Q. While you were a carrier, you were nominated and made [33] Carrier of the Year by Mr. Collins?

A. Yes.

Q. Now, your employment as a fly boy during the period of July, 1958, to December 21, 1959, was at what rate-per hour?

A. Well, when I first started—do you want the first?

Q. Yes.

A. It was \$1.00 an hour.

Q. All right.

A. And then it went to, I think it was—I don't know, either \$1.20 or \$1.25 or \$1.15, something like that; and then it went up to \$1.50, and that was the final.

Q. When did it go up to \$1.15, if you recall?

A. Well, it was when Jack Hancey was circulation manager.

Q. When Mr. Collins became circulation manager, was it a \$1.25? Did he raise you to \$1.25?

A. No. I don't know whether it was up to \$1.15 or \$1.25, either.

Q. It is not important. Anyway it was up to \$1.50 for sometime prior to December of 1959?

(Testimony of David Clark.)

A. Yes.

Q. Isn't it true that the hours that you worked a day varied? A. Yes, they did.

Q. Isn't it true that the hours that you worked per hour varied?

A. Oh, yes. They would vary, yes. [34]

Q. They would vary. You might work as little as 35 hours a week or 36 hours a week?

A. Or I might work 45.

Q. Answer my question. I will get to that, don't worry. I am not trying to trick you or anything. I just want the answer to the question.

A. That is right. They would vary, yes.

Q. You might work as little as 35 hours—

A. Yes.

Q. —or 33 hours, is that right?

A. I don't know. 33 is getting sort of low.

Q. 35 to 45? A. Yes.

Q. You might work as much as 40?

A. I worked more.

Q. You might work as much as 40?

A. Yes.

Q. So that the statement that you had made on direct examination that you worked the 40 hours is not exactly correct?

A. Well, that is what I would put—

Q. Just answer the question and then you can explain. I want that answer to the question.

It is not exactly correct, is it?

A. No. Well, what do you mean by exactly? Did I work that [35] all the time?

(Testimony of David Clark.)

Trial Examiner: I don't think it adds anything, Mr. Bakaly. The record reflects what the situation was.

Q. (By Mr. Bakaly): I take it you have known Mr. Collins since sometime in 1954; about six years?

A. Yes.

Q. You refer to him as Howard? You have throughout this proceeding? A. Yes.

Q. Your relationship with him was a friendly one?

A. Yes.

Q. Was it not? A. Yes.

Q. It was more than a relationship of a normal relationship of a supervisor or an employer and employee, isn't that correct?

A. Yes, I would say so.

Q. Mr. Collins throughout the period of your acquaintanceship took an interest in your education, is that correct?

A. Oh, he talked to me about it, yes.

Q. He was interested in having you remain in school? A. Oh, yes.

Q. Is that correct?

A. That's what he said, yes.

Q. You were in school during the period of say July 19 [36] through December 21, 1959, were you not? A. Yes.

Q. Where were you in school?

A. El Camino Junior College.

Q. You were taking a full college course?

A. Yes. I was taking it full time.

Q. So that your employment at the Daily Breeze during that period of time was an extra employment

(Testimony of David Clark.)

other than your main occupation which was as a student, isn't that correct? A. Yes.

Q. Now, you believed that Mr. Collins was interested in your future, did you not?

A. No. I know he was interested in my schooling. He talked to me about it.

Q. He was a good friend? A. Yes.

Q. He wouldn't do anything to hurt you as far as you believe, is that correct?

Mr. Mark: I object to that.

Trial Examiner: Sustained.

Q. (By Mr. Bakaly): In December, 1959, you desired to remain in school, did you not? A. Yes.

Q. So you didn't want a full time employment?

A. No. [37]

Mr. Mark: I object to that. I'm afraid that Mr. Bakaly is going into matters, going far beyond what I think is the scope of direct examination; and if he wants to make this witness his own, he can.

Mr. Bakaly: Well, this is the charging party, and I will call the witness under 43 B if that will make you any happier, but it won't change my examination one bit.

Trial Examiner: I think the only possible vice in a question that suggests itself to me is that going to school wouldn't necessarily rule out full-time employment, and I think the fact that he is going to school and the hours worked would be all that we could develop, because a person might adopt a different conclusion as to whether it was fulltime or not.

Mr. Bakaly: I will develop it another way.

(Testimony of David Clark.)

Trial Examiner: All right, Mr. Bakaly.

Q. (By Mr. Bakaly): In December, 1959, I believe that you testified, you were carrying a full load as a student?

A. Yes, full-time student.

Q. Full-time student? A. Yes.

Q. You were also employed at the Daily Breeze during that period of time? A. Yes, that's right.

Q. Isn't it correct to say that in December and November [38] of 1959, you were interested in working less hours for as much money as you possibly could so that you would have time to go to school and other activities, isn't that correct?

A. No. I wouldn't say that. I was, the main thing I was interested in was cutting down on my Saturday nights.

Q. Cutting down on your Saturday nights?

A. Yes, too many hours.

Q. Too many hours?

A. Yes.

Q. You wanted time to have some recreation on Saturday nights?

A. Not so much as making a seven-day week of work, I mean.

Q. And that was too much with your school work?

A. I would say that it was, yes.

Q. You wanted time to study and so forth?

A. I would.

Q. You were willing to work fewer hours for more money, isn't that correct? A. No.

Q. In November and December of 1959?

(Testimony of David Clark.)

A. What do you mean by fewer hours?

Q. Fewer hours than you had been working?

A. If I could say, cut down from 14 maybe to 8, but the daily work—I mean it was good. I liked the hours. I could go to school in the morning, work in the afternoon, and leave [39] my nights to study. That was fine. That is what I wanted like that.

Q. And you wanted to have your Saturdays free, and so you wanted fewer hours on Saturday, is that correct?

A. I wouldn't say I wanted it free.

Q. You didn't want to work 8 hours or more on Saturday?

A. Yes. I didn't want to work so many hours.

Q. Mr. Collins was the supervisor of the circulation department at the Daily Breeze, isn't that correct?

A. Circulation manager, yes, the same thing.

Q. Under his authority were several people. Would you tell us who reported to Mr. Collins?

A. Well, there is, I don't know. Dennis Daines and Leo Gagnon—

Q. You don't have to name them. Just the number and what they did. I'm not interested in the names.

A. They were all district men or worked in the mail room, part district and part mail room. There was, I don't know. There must have been about, I don't know, six. I don't know. Six or seven full time.

Q. They were all district managers, were they not?

A. Well, yes. Well, they did mail room work, too.

Mr. Bakaly: I move to strike that comment, Mr.

(Testimony of David Clark.)

Examiner. I will get what he means about mail room work in a minute. [40]

Trial Examiner: The question—

Mr. Bakaly: That was not responsive.

Trial Examiner: The question is whether they were all district managers. Is that the question?

Mr. Bakaly: Yes.

Trial Examiner: Were they, Mr. Clark?

The Witness: By title, yes. I mean what you would call them by title district managers, except, well, Dennis Daines. The last part I worked there, they didn't have a route or something. I don't know. So, he was just a—

Trial Examiner: May I just ask two or three questions here.

District managers would be individuals that had under or were responsible for the circulation of newspapers in a particular district?

The Witness: Yes.

Trial Examiner: Of an area?

The Witness: That is right.

Trial Examiner: And a district manager had personnel or boys that would actually make the deliveries of the papers?

The Witness: That is right.

Trial Examiner: The district manager oversaw that they got their papers and got the money from them that they collected and turned that in? Would that be a general [41] description?

The Witness: Yes.

(Testimony of David Clark.)

Trial Examiner: All right. Now, were you going into the mailer aspect?

Mr. Bakaly: Yes. I'm going to go into his duties.

Q. (By Mr. Bakaly): You stated on direct examination that you were the fly boy?

A. That is right.

Q. It was your duty to fly the press?

A. Yes.

Q. Isn't it true that it was your duty to take the papers off of a conveyor belt many, many feet removed from the press? A. Yes.

Q. So that your duties were really not what is known as flying a press?

A. Well, that is what you call it. It is flying a press. That's what you are doing.

Q. You worked on the taking them off of the press? You were taking them off a conveyor three or four rooms apart from the press room?

A. Well, flying a conveyor.

Q. Isn't that correct?

A. Yes, that's right.

Q. What other duties did you have besides taking the papers [42] off of the conveyor belt?

A. Well, I would, we had wrappers. I would make up, I would make up—well, I would make up wrappers and I would do the mail galleys.

Q. About how many mail galleys would there be?

A. I don't know, 250-275.

Trial Examiner: What is a mail galley, Mr. Clark?

The Witness: Well, it is like the newspapers and mailed out to various cities, you know, that aren't de-

(Testimony of David Clark.)

livered to by the carrier. They are just a piece of paper. You roll the paper up and mail them to the post office.

Trial Examiner: Does wrapping contemplate that they are going to protect the papers from wet weather; is that the purpose?

The Witness: No. It just keeps them in. I don't know, a little compact area. Don't have them flat so they get all wrinkled up.

Trial Examiner: Is the wrapping done in conjunction with putting it or preparing papers for mailing when you mentioned that you did wrapping?

The Witness: I don't wrap them. I just put the names on the mail slips of paper that the papers are wrapped up into.

Trial Examiner: But you didn't do the wrapping?

The Witness: Well, once in awhile, but not very often. [43]

Q. (By Mr. Bakaly): So you prepared the galleys for 250 papers? A. Yes.

Q. There weren't 250 galleys?

A. Yes. There are 250 galleys.

Q. A galley for each name, is that what you mean?

A. Yes.

Q. Now, did the district managers take the papers and arrange them for their carriers? You didn't have anything to do with that?

A. What do you mean arrange?

Q. They took the papers and organized them for distribution to their particular carriers, and they put them into bundles and so forth? You didn't do that?

(Testimony of David Clark.)

A. Well, I stacked them up, yes. I mean—

Q. You stacked them up for, so many for a certain district manager and so many—

A. No, not in that way, not on the dot.

Q. Not on the dot? A. No.

Q. You didn't do that? A. No.

Q. Have you told us all of your duties?

A. Well, I, on Saturdays and Sundays, I would count out comics and magazines, and well, even on those days, I would [44] stack for the district managers.

Now, I mean I would stack them on the dot, so many for such and such on Saturdays and Sundays I did.

Q. Now, there were about 7 district managers?

A. Yes.

Q. Full time? A. Full time.

Q. You were classified as a part-time employee?

A. Yes. That's what I was classified as, yes.

Q. You were a part-time employee, isn't that correct?

A. Well, what do you consider a part-time; less than 40 hours?

Trial Examiner: I think the record will request what hours he worked. His characterization wouldn't help, I don't believe.

Mr. Bakaly: Very well, Mr. Examiner.

Q. (By Mr. Bakaly): The Daily Breeze didn't always have full time district managers, did they?

A. No. When I first started working, they had very few.

(Testimony of David Clark.)

Q. In May or June of 1959 or prior thereto, the great majority of the district managers were part-time district managers, isn't that true? A. Oh, yes.

Q. Men who had jobs elsewhere for full time such as at an aircraft factory? [45]

A. Yes.

Q. Is that right? A. That is right.

Q. Isn't it true that there was a lot of turnover of the district managers; they changed often?

A. Yes, quite a bit.

Q. And that there was a considerable—each time a new district manager came in, there was considerable confusion about him learning the job of that district and learning what to do and so forth, isn't that true?

A. Yes.

Q. So that to alleviate this, full-time district managers were employed in June or so of 1959, is that right?

Mr. Mark: I object to that. That calls for a conclusion. I don't think that is properly within the knowledge of the witness;

Mr. Bakaly: Very well. I will delete to "alleviate." The objection is well taken.

Q. (By Mr. Bakaly): I will ask you if it isn't a fact that in June or July of 1959, full-time district managers were employed by the Daily Breeze?

A. Well, they had full-time before then.

Q. All district managers were full time in June or July of 1959? A. Not all.

Q. How many part-time district managers were there? [46]

(Testimony of David Clark.)

A. Let's see. June. There was, I was graduated after that—I think there was about 4, 4 or 5, because, well, we had 11 districts. I remember that, and, well, even if you figure 7 full-time men, 1 guy not running a route, that leaves 5 part-time men right there.

Q. When the full-time men were put on, the number of districts were cut down, were they not, and each district was enlarged; so that in 1959, in June or July, there were 7 or 8 districts, isn't that correct?

A. I don't think so.

Q. You don't think so?

A. I think there were 11.

Q. Very well. I will get it from Mr. Collins.

However, even after most of the district managers were full-time, there was still some turnover of district managers, isn't that true?

A. Yes. There were quite a few for full-time.

Q. There was still confusion whenever a district manager would have to be hired because he didn't know anything about the business or the route, isn't that correct?

A. That is correct.

Trial Examiner: Mr. Bakaly, it occurs to me that we perhaps may be getting into a situation of your case which will probably be put on through independent testimony. Anyway, this is being taken in rather an indecisive way to this [47] witness. I am thinking of the decisions and the management changes and reasons for them.

Mr. Bakaly: I just want to make sure this witness had knowledge of all of them, and I am about through with that area anyway. You are absolutely correct.

(Testimony of David Clark.)

This is certainly part of our case, but I'm about through with that.

Trial Examiner: All right.

Q. (By Mr. Bakaly): Now, in the fall of 1959 and by fall I mean September or October or November of 1959, isn't it true that you had a conversation or series of conversations with Mr. Collins concerning this problem of the confusion that would arise when a district manager quit or was sick and there was nobody trained to take his place?

A. I don't know. He might have said something about not being able to get good help.

Q. That is right.

A. But that is about all.

Q. Didn't you in the fall of 1959, after you had purchased a pick-up truck, offer to help out the district managers on occasion?

A. Well, yes, one John Byers.

Q. The answer to the question is yes.

A. Do you mean help?

Q. Help out the district managers? [48]

A. No, not managers.

Q. One manager?

A. One manager, yes.

Q. Did you help out a district manager on occasion?
A. For about three weeks.

Q. And you delivered papers in your truck for him, is that correct?

A. Yes. Right by my house. I just dropped them off. The carriers lived right off the same block as I did, and it was not out of my way or nothing.

(Testimony of David Clark.)

Q. Well, didn't you use your truck on behalf of the company then in some other respect during the fall or so in 1959?

A. One—I think once, one Saturday I run a route for Jim Erickson; but after I told him, I told Dennis even after that, that I couldn't. I couldn't do it anymore because of insurance. I told him that after John Byers.

Q. You did do it on occasion, however?

A. That was the last time, yes.

Q. When you did that, weren't you reimbursed by the company telling you to stock up some extra hours on your payroll, and they would pay you for the gas mileage during that time?

A. Once, two times; about four times I did it, two times I got paid.

Q. Extra hours, you mean?

A. Yes. One time I got—yes. Those were extra hours. [49]

Q. And this was because the rest of the district managers were getting so many cents per mile, isn't that true?

A. And he said he couldn't get mileage for me.

Q. But you knew at that time in November and December and October of 1959, that the district managers were getting paid certain cents per mile, approximately 8 cents per mile, isn't that correct?

A. Yes. I don't know the exact rate.

Q. You knew they were getting money to compensate them for the gas mileage and the depreciation of their automobiles, isn't that true?

(Testimony of David Clark.)

A. I knew they were getting money, but it wasn't paying for the—

Q. Answer my question. You knew they were getting money? A. That's right.

Q. Isn't it a fact that that was more than paying for it?

A. No. I have never met one person down there—

Trial Examiner: I think this would be very unproductive at this stage.

Mr. Bakaly: Very well.

Q. (By Mr. Bakaly): During the fall of 1959, in these off-hand, casual conversations that you had with Howard, did you ever have a conversation in which it was discussed that you might become a part-time district manager on a trainee basis of some kind? [50]

A. No.

Q. You don't recall any such conversation?

You were the only full-time employee that spent the majority of his time in the mail room, isn't that correct? A. Let me see. Yes.

Q. Isn't it true that the other employees, the press men, the stereotypers, and so forth, gathered in the mail room occasionally to eat lunch and so forth?

A. Yes. They eat their lunch there sometimes.

Q. All the employees did and Mr. Collins would be in there on occasion?

A. Yes. That is the only place they had to eat, actually.

Q. Lots of talk about union during lunch and so forth, wasn't there, as a casual nature?

(Testimony of David Clark.)

Mr. Mark: I really don't see—well, never mind. I will withdraw the objection.

The Witness: Of a casual nature?

Q. (By Mr. Bakaly): Yes. All the men would talk at various times about their particular union or some other union or the union movement in general or the—

A. Well, I never ate lunch with them, see.

Q. You didn't eat lunch with them, but you were there working right next to where they were eating lunch?

A. Sometimes, yes.

Q. Did you ever hear of any conversations about union? [51]

A. I heard union talk from everybody there.

Q. It was free and easy around the plant, isn't that correct?

A. Even in circulation I heard union talk.

Q. Surely. A. Okay.

Q. We agree on something here.

Now, on the 19th of December, that was the Saturday that you had a conversation with Mr. Collins, isn't that correct? A. That is right.

Q. Mr. Gagnon was also present at that conversation, isn't that correct? A. That is right.

Q. At that conversation he told you that he had finally gotten approval of a job as a circulation trainee?

A. That's right.

Q. Isn't that correct? A. Yes.

Q. He used the words, he finally got the approval, isn't that correct?

(Testimony of David Clark.)

A. Yes. He said he finally got the approval.

Q. Does that refresh your recollection that you and he had discussed the trainee position previously?

A. That was the first I had ever heard of the trainee position.

Q. Mr. Collins stated on that occasion that the first step [52] of this training program was the fly boy job, isn't that correct?

A. That's right.

Q. And that you were qualified for the trainee position because of the fact that you had been a fly boy for some time because of the fact that you had assisted other district managers on occasion, isn't that correct?

A. That is right.

Q. And also because he liked you and liked your work and he wanted to give you this opportunity, isn't that correct? Did he say that or words to that effect?

A. I guess. I don't remember as far back. He could have. I—

Q. Now, he stated that the pay would be, I believe you testified \$55.00 a week for approximately 33 hours, is that correct?

A. I don't remember the exact.

Q. It was suggested that it would be about \$1.67 an hour?

A. He didn't say the hours. He took my average and I don't know. He didn't say the hours. He said it would be \$55.00 a week. That was about it.

Q. It might be more than that if you worked 33 hours though, isn't that correct?

A. I never heard anything about that.

(Testimony of David Clark.)

Q. Didn't he tell you that it might be possible to work [53] 33 hours or 35 hours on occasion?

A. Not that I know.

Trial Examiner: Excuse me, Mr. Bakaly, I thought we might get it in now. I didn't want to interrupt your cross-examination, but it is on the same subject.

As I recall, there was some reference to working a 30 hour week in connection with this trainee program when you were answering questions that Mr. Mark asked you. You remember that?

The Witness: I said either 30—I didn't remember the exact amount of hours. I said it was either 30 or 33. I didn't remember the exact amount of hours that it was.

Trial Examiner: Do you remember what you said, and I may be wrong, too—this morning here in connection with how many hours this trainee job would take?

The Witness: It was less than what it was, than it was before, what I was working before. That's all I remember saying now. I don't—

Trial Examiner: All right, sir. Go ahead, Mr. Bakaly.

Q. (By Mr. Bakaly): I believe you testified that at this conversation on the 19th of December, you stated that one of the reasons you didn't want the job was because your car insurance would be increased, is that correct?

A. Car insurance and gas mileage.

Q. And gas mileage would be increased? [54]

A. Yes.

(Testimony of David Clark.)

Q. Putting that aside and assuming for the moment, and it is only an assumption, that the gas mileage and your car insurance would not be increased, you realized on December 19th, that this new job of the trainee was a better job in terms of pay and work for you, isn't that correct?

A. Putting aside gas mileage?

Q. Gas mileage and car insurance, putting that aside?

A. It would have been a better work?

Q. It would have been a better job? There would have been more money, isn't that correct?

A. Well—let's—I was making—

Q. Putting aside the gas mileage and insurance?

A. Do you mean more money for less hours?

Q. That is right.

A. It would have been less money. It would have been actually less money than that I was working, making before.

Q. On an hourly basis it would have been more?

A. On an hourly basis, yes.

Q. You don't really know whether it would have been more money or not because it would have been less money, because your hours as a fly boy fluctuated and so forth, so that on many weeks this \$55.00 would have been more than what you had previously made, isn't that correct, even on a weekly basis?

A. It would be. I don't know. [55]

Q. It could be?

A. I mean I don't know. I just—

Q. Well, I just want to make sure your \$60.00 'is

(Testimony of David Clark.)

not the amount of money that you received every week as a fly boy? Some weeks you received less and—some weeks you received less than \$55.00, isn't that right? A. No. See—

Q. As a fly boy?

A. That's what I'm talking about.

Trial Examiner: Just on this general theme, did you receive, say, during 1959, less than \$50.00 a week as a fly boy?

The Witness: During '59?

Trial Examiner: Yes.

The Witness: I probably did because of—

Trial Examiner: On any week?

The Witness: Because some, during some of 1959, I was making \$1.50 an hour.

Q. (By Mr. Bakaly): When you were making \$1.50 an hour?

A. When I was making \$1.50 an hour?

Q. Yes. A. No. Less than 50.

Trial Examiner: I think that was—

Q. (By Mr. Bakaly): Less than 55 is my question?

Trial Examiner: Less than 55 was your question. I [56] meant 55, sorry.

The Witness: I don't think I made less than 55, because some weeks I would work over 40 hours.

Q. (By Mr. Bakaly): I'm not talking about that. I'm talking about the weeks when you, some weeks you would have made less than 55, isn't that correct?

A. Yes. The hours I worked the overtime I would put back onto the hours that I worked less.

(Testimony of David Clark.)

Trial Examiner: Are you stating that you are averaging it out, Mr. Clark?

I think what we are directing attention is just a pay check for a particular week. Now, it may average considerably more than 55, but the question just goes to the narrow point as to whether in some weeks you received less than \$55.00 when you were getting \$1.50 an hour?

The Witness: No.

Trial Examiner: All right.

The Witness: I mean I wouldn't say definitely, but I might have made 50. I don't think I made less than 55.

Trial Examiner: That is your best recollection?

The Witness: Yes.

Q. (By Mr. Bakaly): But in any event, in your conversation on December 19th, putting aside the cost of insurance and gas mileage, you didn't make any objection to Mr. Collins concerning the amount of pay in the new job? [57]

A. No.

Q. And your answer is you did not make any objection?

A. I did not make any objection to the amount of pay, I mean.

Q. Isn't it true that during that conversation, you knew that you would be paid a certain amount of cents per hour for the gas mileage in this new job?

A. During this conversation it wasn't mentioned.

Q. I asked you if you knew at that time that you would be paid the gas mileage? A. No, I didn't.

(Testimony of David Clark.)

Q. You did not know? A. No.

Trial Examiner: Did you know what the other people were getting?

The Witness: I didn't know the exact. I knew they were getting money.

Trial Examiner: You knew that everybody that was doing that kind of work got gas mileage or reimbursement?

The Witness: That is right.

Trial Examiner: All the district managers used their own vehicles?

The Witness: No.

Trial Examiner: Did some of them?

The Witness: Some of them. Breeze had two trucks of [58] their own, and they don't get reimbursed for their gas mileage.

Trial Examiner: Yes.

Q. (By Mr. Bakaly): Now, in this conversation on the 19th of December, did Mr. Collins state that if you did not want the job, the training job, he would have to hire somebody else as a fly boy? A. Yes.

Q. So that on December 19th, you knew that if you did not take the job as the trainee, there would be, that someone else would replace you as a fly boy, isn't that correct? A. Well, on the 19th?

Q. Yes.

A. Well, I wasn't sure, but I mean just by going what he said, yes.

Q. That is what you understood?

A. Yes. That's what I understood, yes.

Q. During the conversation during the 19th, Mr.

(Testimony of David Clark.)

Clark, did you give as a reason for not taking this job the fact that you were attempting to obtain a job as a mailer in Los Angeles where you could work two shifts a week with many less hours and make more money than you were making at the Daily Breeze?

A. No. On Monday I said that.

Q. You made no such statement on the 19th?

A. On Saturday, no. [59]

Q. On Saturday the 19th did you complain about having to leave your fly boy's job if you didn't take the training job?

A. Did I complain?

Q. Did you complain? Did you make any statement that that was not fair, that that was wrong or anything like that?

A. No. I just said that I would like to keep my job, the one I had.

Q. You said that on the 19th?

A. On the 19th.

Q. Now, did you have a conversation with your father on the 19th? A. I phoned him.

Q. Concerning this job opportunity?

A. I didn't have a conversation. I just phone him up and told him, that, you know, how I wanted to see him about another job, but that was the extent.

Q. That was what you said?

A. That was the extent of the conversation.

Mr. Bakaly: I am going into a new conversation on the 21st, Mr. Examiner. What is the Examiner's pleasure of breaking for lunch. It is immaterial to me.

(Testimony of David Clark.)

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Bakaly): Mr. Clark, just before the recess, you [60] told us that on December 19th, you told Mr. Collins that you wanted to keep your job as fly boy?

A. That's right.

Q. Did you ever tell any representative of the National Labor Relations Board that you said that in the course of your conversation on December 19th?

A. I don't know. I don't, I don't know.

Mr. Bakaly: I would like to have a stipulation that the statements presented by the General Counsel did not recite any statement by Mr. Clark that wherein he told Mr. Collins on December 19th that he wanted to keep his fly boy job.

Mr. Mark: Well, we haven't actually offered any statements.

Mr. Bakaly: I will now offer—

Mr. Mark: I'd just as soon state it in the affidavit that we have procured in the investigation, that there does not appear any mention of this particular statement.

Trial Examiner: That is, the proffered stipulation went to that it doesn't appear in any.

Mr. Bakaly: It is just the form of impeachment by a negative kind of impeachment.

Trial Examiner: Well, it is subject to being argued of what the—

Mr. Bakaly: That is right.

(Testimony of David Clark.)

Trial Examiner: But there's no question, I take it, as [61] to the fact that it does not appear.

Mr. Mark: No, there is no question.

Trial Examiner: All right.

Q. (By Mr. Bakaly): And your testimony is that you don't recall whether or not you made this statement to the Board that you told Mr. Collins on the 19th that you wanted to keep your job?

A. Well, he said I didn't, I must have not. I don't remember it, no.

Trial Examiner: I am going to ask you again, Mr. Clark, to make a very, very serious effort to go slower.

The Witness: Okay.

Q. (By Mr. Bakaly): Isn't it true, Mr. Clark, that you are not sure that you made such a statement to Mr. Collins on the 19th of December?

A. Yes. I am sure because—well, when I joined the union, just, they said in case, you know, if anything did come up, that, you know, in case they wanted to get rid of me, you know, because I joined the union, you know, to tell them, you know, if, see if I could keep my same job. That's what he told me, you know.

Trial Examiner: Does this go to the 19th when you were talking to Mr. Collins?

The Witness: Yes.

Trial Examiner: Do you say you are sure about what Mr. [62] —Mr. Clark, I am not certain what you are sure about?

The Witness: Well, when the union representatives came over to my home and signed me up, you know—

Trial Examiner: I realize the background, but the

(Testimony of David Clark.)

narrow problem we are now dealing with is whether or not you are sure on the 19th of December, 1959, you told Mr. Collins that you wanted to keep your job as fly boy?

The Witness: I am pretty sure. I am—okay, I am sure.

Trial Examiner: All right.

Q. (By Mr. Bakaly): December 19th was the first time that you had been offered this job as trainee, isn't that correct? A. Yes, it is.

Q. You had discussed with representatives of the union then that job? A. Not that job, no.

Q. Did you have a conversation with Mr. Collins on the 21st? A. Yes.

Q. I believe you testified on direct examination that only Mr. Collins was present, is that correct?

A. As far as I can recall, yes.

Q. Isn't it true that Mr. Gagnon was present at that conversation?

A. If he was, he wasn't there at the end of the conversation.

Q. He was not? A. No.

Q. Didn't you testify that Mr. Gagnon and you went down to [63] the mail room at the end of that conversation?

A. Yes, because Howard called him in, I remember, at the last, so he would go down and I could show him how I did the mail galleys.

Q. He called him in?

A. Yes. I am positive of that.

(Testimony of David Clark.)

Q. Now, were the advantages of this training job related or stated to you by Mr. Collins again on the 21st?

A. He asked me if I had made up my mind about the job.

Q. Didn't he also again tell you that it would be a good opportunity for you to take the training job?

A. I don't remember that. He might have something to that effect, but I don't remember it.

Q. That it would enable you to stay in school? Did he mention anything along that line?

A. I think he said that he wanted to make sure that I stayed in school, you know.

Q. That this would be a job of less hours for the same or more pay? Did he say words to that effect?

A. I don't remember him. He—

Q. In this conversation, did you tell Mr. Collins that you would definitely not take the training job?

A. Yes.

Q. Dropping back a minute to the conversation on the 19th, at the end of that conversation, did you state, did you not, [64] that you wanted to talk it over with your father? A. That is right.

Q. So on the 21st, now, isn't it true, that you stated that the reason that you did not want to take the training job, was because you would rather go to Los Angeles and work as a mailer where you would work two shifts a week and earn less money?

A. No, because the way that come out, Howard asked me—well, what are you going to do now, you know, for money and a job.

I told him, well, I'm not sure, but I think I would

(Testimony of David Clark.)

maybe get a job somewhere as a mailer and just work a couple of days a week, you know, and—

Q. You didn't have any job arranged or you hadn't thought about a job in Los Angeles on the 21st?

A. Well, I couldn't have, because when I joined the union, I signed this—I don't know, paper or binding deal, stating that when I joined the union, I would have to stay at the Breeze until it was organized or some agreement was reached, unless I was fired.

Q. Is it your testimony that you did not state on the 21st that you could get a job in Los Angeles as a mailer?

A. No. I said I might be able to.

Q. Isn't it true that you went on to work on the evening of the 21st at Pacific Press as a mailer? [65]

A. That is right.

Q. That you worked there off and on as a part-time mailer ever since?

A. Yes, there and the Examiner. I work off and on.

Q. Is it your testimony that you had made no previous arrangement prior to December 21st to get that work?

A. That's right. I had never even heard of the Pacific Press until—

Q. Your father had, hadn't he?

A. Probably, but I never mentioned—

Q. Isn't he employed by a printing press company in town?

A. Well, that's right, but I never had heard of it before.

(Testimony of David Clark.)

Q. Never discussed with you the fact that Pacific Press is one of the largest printing companies, if not the largest, west of Chicago?

A. I have never heard of it before.

Q. Now, you said you were only employed about 15 or 20 minutes on the 21st, is that right?

A. Oh, no. I would say it was longer than that.

Q. After the conversation with Mr. Collins, you went down to the mail room with Mr. Gagnon.

During the conversation with Mr. Collins, did you ask Mr. Collins if he needed you to train a new man?

A. I asked him if he wanted me to stay around today, and he says no, that it wouldn't be necessary.

[66]

Q. He said it wouldn't be necessary?

A. That's right.

Q. Did he tell you at that time that you were being discharged?

A. Well, he told me before that he was going to have—

Q. Answer the question and then you can explain. I just want an answer to the question. Did he tell you in substance or in fact, that you had been discharged?

A. Yes.

Q. What did he say in that regard?

A. He said that as long as, that seeing that I would not be taking the job, that he would have to let me go to get some new boy in to train as a fly boy.

Q. Before he said that on the 19th, too, he told you that?

A. He said the same thing on—

(Testimony of David Clark.)

Q. But he didn't tell you, he didn't use the words is what I meant before? A. He didn't say.

Q. He didn't use the word discharge actually.

A. He didn't say you are discharged. He said I would have to let you go.

Q. And the reason he stated that was that this training job contemplated a new man starting at the fly boy position, isn't that correct?

A. That's right. [67]

Q. Now, did you have any conversation about the car insurance on the 21st?

A. On Monday, yes. That's when he mentioned the gas mileage to me.

Q. What did he say in that regard?

A. He said, "We might be able to work out some gas money" but I said, "I will leave it and I still couldn't take it."

Q. Did you tell him "All the other district manager were getting gas mileage, so why couldn't I get gas mileage?"

Did you say anything to that effect?

A. No, because the way I figured it, I didn't know enough about the job and another thing I would be a trainee. I mean I didn't know how it worked, and he said—

Q. Just a minute here. Let me ask the questions and you can give the answers.

You didn't know that the district managers got mileage? A. Yes, I knew.

Q. And you knew that some of your duties as a

(Testimony of David Clark.)

trainee were going to consist of being an assistant district manager, didn't you?

A. Okay, so, but that wouldn't be enough money to keep, for my gas or insurance.

Q. What would your other duties be, Mr. Clark?

A. I don't know.

Q. All duties having to do with driving your car. You knew [68] on the 21st that your car, that you would be compensated for your car, didn't you?

Mr. Mark: I object to that. Now, he has stated that in the past he has known other people that have been compensated for gas mileage. Therefore, Counsel had asked whether or not Mr. Collins stated that he would be reimbursed for gas mileage.

Now, he is changing the question again to whether or not he knew. I think this tends to confuse the witness, and I think we should stay with the point as to whether or not he knew that people had been compensated for gas mileage in the past whether he had actually been told by Mr. Collins that he would be compensated.

Trial Examiner: Well, I think the record shows that he knows that other people that use their cars are compensated, and then on this occasion Mr. Collins indicated that there would be something considered with respect to reimbursing you for—

The Witness: He said—

Trial Examiner:—your expenses.

The Witness: He might, he might.

Q. (By Mr. Bakaly): But in the past when you used your car, Mr. Clark, you received money for hours

(Testimony of David Clark.)

that you didn't work to compensate you for your car; didn't you testify to that?

A. Money for what now? [69]

Q. You were told to put in for hours that you did not work to compensate you for the use of your car on previous occasions? You testified to that here this morning?

A. Yes, but not every time.

Q. So from that, didn't you believe on the 21st, that you would get mileage for your automobile?

A. Yes, but I was—okay.

Q. Is the answer yes? You testified that.

A. That is right.

Q. You are unmarried, is that right?

A. That is right.

Q. Do you know the classification or rate of your automobile insurance?

A. Well, right now it's around \$280.00 a year and—

Q. Do you know that this is the highest rate charged for any automobile insurance in the county of Los Angeles, the rate for a single—

A. Yes.

Q. —under 25 year old for a man?

A. That's right.

Q. Do you also know that the rate for a single man under 25 years of age may be lower if he is using his car in business?

A. Not in our insurance company, because we checked.

Q. Then your answer is you do not know? [70]

A. That I do not know what?

Q. That the rate might be lower if you are using

(Testimony of David Clark.)

your automobile in business and you are under 25 and single?

A. I know it is more because we were told by an insurance agent.

Q. Who is we? A. My father and I.

Q. You were told this when?

A. I don't know. It must have been just a little bit after I got let go, because they were checking to see.

Q. The reason that you gave on the 19th, Mr. Clark, was that your car insurance would be high. At that time you didn't know whether it would be higher or lower, did you? A. Yes.

Q. Mr. Clark,—

A. For one reason. One, Dennis Daines works down there, and there is a lot of these other guys that are young and even married, and even Howard has said this before, that clearing your papers is the most expensive type insurance to cover because—

Q. I'm talking about the insurance rate for a single man under 25, and I'm asking you if on the 19th, when you gave that as a reason for not wanting this new job, didn't the fact that you did not know whether the rates would be higher or lower at that time? [71]

A. I knew. You can ask—

Q. You believed that this would be higher, is that right? A. I knew.

Q. The conversation you had with an insurance man was later than that, wasn't it, Mr. Clark?

A. Yes, but I heard from actual cases— [72]

Q. Just answer my question. I just want to make

(Testimony of David Clark.)

it clear for the record that the conversation you gave previously for knowing the facts, that that conversation was after. A. That was after.

Q. December 19th?

A. That was right, that was after.

Trial Examiner: How long have you had a car or vehicle, Mr. Clark?

The Witness: How long have I had a car?

Trial Examiner: Prior to 1959, December.

The Witness: Of December. The car I am driving now how long I had?

Trial Examiner: Any car.

The Witness: I had a car when I was 16. That's three years ago.

Trial Examiner: You said that you bought a truck?

The Witness: The last car that I have is a truck.

Trial Examiner: When did you get that?

The Witness: It was just before school got out, in June.

Trial Examiner: Of 1959?

The Witness: Yes. I think it was the first week in June, 1959.

Trial Examiner: Do you use the truck for anything other than transporting yourself?

The Witness: No. [73]

Mr. Bakaly: Have you finished, Mr. Examiner?

Trial Examiner: Yes.

Q. (By Mr. Bakaly): Now, on the conversation you had on the 21st, did you state at that time that you wanted to remain on as a flyboy?

A. I asked him if I could keep my present job, yes.

(Testimony of David Clark.)

Q. You stated that on the 21st? A. Yes.

Mr. Bakaly: May I have the same stipulation that such a statement would not appear in—

Mr. Mark: Just a minute.

So stipulate.

Trial Examiner: Would you state the stipulation a little bit more.

Mr. Bakaly: I offer to stipulate that the statements submitted by this witness to representatives of the National Labor Relations Board do not contain a reference to a statement made by Mr. Clark to Mr. Collins on December 21st to the effect that Clark did not—stated he did not—did want to remain at the Daily Breeze as a flyboy.

Mr. Mark: So stipulated.

Trial Examiner: I would like to ask the question if it isn't inconvenient.

Mr. Bakaly: Not at all. Go right ahead. I am getting near the end here. [74]

Trial Examiner: Mr. Clark, did you ever tell Mr. Collins that the reason you didn't want to take the trainee job was because you had made what you considered an agreement with the union that you would not change jobs at the Daily Breeze?

The Witness: Did I ever tell Mr. Collins that I—

Trial Examiner: That is the reason that you didn't want to accept the trainee job?

The Witness: Because I couldn't.

Trial Examiner: Because you have made what I understood you considered to be an arrangement when

(Testimony of David Clark.)

you joined the union that you would not change jobs here?

The Witness: Oh, no.

Trial Examiner: You didn't mention that?

The Witness: No.

Trial Examiner: All right. When you made a reference to the insurance cost, was there any request which you or statement by Mr. Collins that as to how the insurance cost might be compensated for your vehicle?

The Witness: No.

Trial Examiner: Well, was there any mention by Mr. Collins as to a rate per mile, how many cents per mile you would be reimbursed when you used your own vehicle?

The Witness: No.

Trial Examiner: During the course of your work there in the mail room, do I understand that you did not know how much [75] the other district managers were getting?

The Witness: That is right. I knew. I didn't know exactly how much.

Trial Examiner: You didn't have any information on it except that they were getting something?

The Witness: Well, I heard some of them talking about it, but every one was different. I mean, I don't know. I never talked to anybody than—

Trial Examiner: All right.

Q. (By Mr. Bakaly): Now, since December 21, 1959, can you tell us the average number of hours per week that you have worked since that?

(Testimony of David Clark.)

Mr. Mark: I object to that. I don't know whether this is relevant to the issues.

Trial Examiner: I don't see it, Mr. Bakaly.

Mr. Bakaly: Let me see if I can't explain it, Mr. Examiner.

One of our defenses here is that this job was offered, trainee was offered to Mr. Clark which was a better job than the previous job, that he could not take it because of the fact that he wanted to work in Los Angeles for less hours and make more money; this was communicated to us.

Now, it seems to us that if he had since worked in Los Angeles and worked lower hours and received as much or more money as we would pay him, that that is some evidence that [76] this is what he wanted to do, and this tends to show that the leaving of the job on the 21st and the not taking the job—trainee position was voluntarily on the part of the complaining party.

Trial Examiner: So far, I don't believe there is any serious question that the record shows that the trainee job was open to him, but he didn't voluntarily, at least, according to what we have heard so far, relinquish this previous type of work that he was doing there. This is based on what I have heard so far.

Mr. Bakaly: There is no question here but what he couldn't keep the flyboy job and he knew it. There is no issue of that nature here.

Trial Examiner: Now, going from there and taking the intervening history of his employment, and we find that, if I understand you correctly, that you will have employment where he doesn't have so many hours, and

(Testimony of David Clark.)

maybe particularly on Saturday which seemed to be a source of concern for him, would from your theory, as I understand it, cast doubt on whether he wanted to really keep the flyboy job.

Mr. Bakaly: That is right. That is why I said at the beginning this is not really a simple case of whether he was discharged or voluntarily quit. There are really two things. It is our contention that the trainee job was a better job, and that he was offered that just like a transfer would have [77] been. I am sure the Examiner is familiar with cases where there have been transfers from one employment to another, and the Board holds that if the employment is substantially different or detrimental, then there might be a constructive discharge; not if employment is better. Then there is not such a constructive discharge, so that is the first point.

Now, we say that the transfer from the job as flyboy to trainee was not a constructive discharge. We say that he did not take the job as trainee, because he wanted this employment in Los Angeles.

Trial Examiner: Well, I would assume, and I may be incorrect, I would assume that it is the General Counsel's theory that the object offering the other job was to remove a potential union adherent or organizer in a segment of the operation, and that the case of discrimination will be predicated upon that theory. Is that correct?

Mr. Mark: That is correct, Mr. Trial Examiner.

Trial Examiner: Well, I think in view—

(Testimony of David Clark.)

Mr. Bakaly: Only, that is correct, Mr. Examiner, if the new job is a worse job.

Trial Examiner: Well, that may be.

Mr. Bakaly: That is our understanding.

Trial Examiner: I can only hear what I am picking up this morning.

Mr. Bakaly: That is right. I think this colloquy is good, [78] and it sort of lets counsel know where we are going.

Trial Examiner: On the narrow point of whether or not the employment has been reduced and particularly in view of the testimony that Mr. Clark was anxious to cut down on his Saturday chores, I will take this type of evidence. Otherwise, I wouldn't think it would have any significance.

Mr. Bakaly: Very well, thank you.

Q. (By Mr. Bakaly): Prior to that, from what you say, reminds me of this. The job as trainee did not involve Saturday evening, isn't that true?

A. That was, I was told that I wouldn't have to work, you know, straight through on Saturday. I could probably come in like district manager or something.

Q. And work a normal three or four hours or half a day, in other words?

A. Yes, whatever—

Q. It would cut down your Saturday work?

A. That is true.

Q. Now, then, let us get to the employment since.

Trial Examiner: The problem could be treated very generally.

(Testimony of David Clark.)

Mr. Bakaly: Yes. I think so. That is what I want, an average basis.

Q. (By Mr. Bakaly): What is the total number, average number of hours that you worked per week since December 21st? [79]

A. I would say about—I don't know. I average about three days a week, probably since then. That would be about 22 hours or so.

Q. Twenty-two, three hours a week?

A. Yes, somewhere around there, average some weeks more and some weeks less.

Q. What was your average pay per week since then?

A. Probably around—I don't know. I don't know. Probably about 70. Oh, I don't know. Right around 74. Maybe a little more, maybe a little less. I don't know.

Q. Around 70 or 75.00?

A. Yes. Probably somewhere in there.

Q. And this employment has been in Los Angeles as a part-time mailer?

A. Yes. At the Examiner in Huntington Park.

Q. The Pacific Press?

A. The Pacific Press, yes, in Huntington Park, yes.

Q. Now, did you work harder on these jobs than you worked at the Daily Breeze?

A. Oh, physically, yes. Physically it is harder.

Q. Did you tell Mr. Collins on the 22nd, that the work you had performed the 21st, was "rough"?

A. Yes, it was. Well, it was, it was a lot of tying.

Q. Did you have a conversation with Mr. Collins on the 22nd? A. Yes. [80]

(Testimony of David Clark.)

Q. Did you receive pay for the week ending Friday the 18th?

A. Yes, That was the Friday the 18th?

Q. Tuesday was the normal pay period for the preceding week ending on a Friday?

A. That is right.

Q. Did you also receive a check for Saturday and three additional days?

A. That is right. Saturday through, yes, Wednesday.

Q. Did Mr. Collins say to you that these three additional days was in the form of severance pay?

A. Yes.

Q. Did you say you were very happy about that?

A. I said—well, that is a lot, yes.

Q. And you were happy on the 22nd, isn't that correct?

A. About receiving the money, yes, for not working, sure.

Q. You weren't mad at Mr. Collins?

A. Oh, no. What was there to be mad about.

Q. You have never been mad about Mr. Collins?

A. Well, we are friends.

Q. You are still friends? A. I hope so.

Q. You didn't believe he was trying to harm you by offering you the job as a trainee, did you?

Mr. Mark: I object. Again I don't think this is relevant at all. [81]

Trial Examiner: I don't think so either.

Mr. Bakaly: Very well.

Q. (By Mr. Bakaly): On the 22nd, did you com-

(Testimony of David Clark.)

plain about not working as a flyboy at the Daily Breeze?

A. Did I complain about it?

Q. Yes.

A. No. He asked me if I still wanted the trainee job, and I told him no I couldn't take it.

Q. Did you ask to be reinstated by the Daily Breeze?

A. On Tuesday?

Q. Yes. A. No.

Q. Have you at any time since then asked to be reinstated? A. No.

Q. Have you ever asked to be reinstated?

A. Yes.

Q. For your job at the Daily Breeze?

A. What was that?

Q. Have you ever asked to be reinstated for your job at the Daily Breeze?

A. No, not to be reinstated, no.

Q. Prior to December 19th, 1959, did you ever have a conversation with a representative of the mailer's union in which he stated that he would get you a job in Los Angeles where you would work fewer hours for more money than what you were making [82] at the Daily Breeze? A. No.

Q. Or words to that effect? A. No.

Trial Examiner: When did you get this job where you started to work on the 21st?

The Witness: Well, see, after I left the Breeze on that day, I went home and told my father about it.

Trial Examiner: Which day, the 19th?

The Witness: Monday, the 21st.

(Testimony of David Clark.)

Trial Examiner: And you went to work that night?

The Witness: I went home and I told my dad about it, and he phoned up the union office and told them what had happened. He says, "Well, you know how it is."

Mr. Bakaly: Object to this, Mr. Examiner, as hearsay.

Trial Examiner: I was just asking when he got the job and the answer is—

The Witness: It was Monday afternoon.

Trial Examiner: —is that he got it on that night. The other part may be stricken.

Mr. Bakaly: Thank you.

I don't believe I have any more questions at this time. I take it that Mr. Clark is going to remain available throughout the day, isn't he?

Mr. Mark: Yes, yes, he is. [83]

Mr. Bakaly: And if something does come up, we could recall him under 43(b).

Trial Examiner: Do you have any redirect, Mr. Mark?

Mr. Mark: Yes, I do.

Redirect Examination

Q. (By Mr. Mark): Dave, you testified that you did not have a conversation with anybody from the Mailers Union in regard to obtaining you a job for less hours—

A. That's right.

Q. —and better pay?

Did you have a conversation with him in regard to obtaining a job?

A. No. The reason for me joining the union was

(Testimony of David Clark.)

to try to improve the conditions down there at the Breeze.

Mr. Bakaly: I move to strike that as not responsive to the question.

Trial Examiner: Granted.

Q. (By Mr. Mark): You testified that you told Mr. Collins that you might be able to get a job in Los Angeles? A. That is right.

Q. What did you base that opinion on?

Mr. Bakaly: Do you mean statement?

Q. (By Mr. Mark): Statement.

A. Well, on the union representative, what he had told me.

Q. What was that? [84]

A. That if, you know, if they fired me for joining the union, they would see that I got enough work.

Q. But there was at no time that you had been promised or even sought a job?

A. No, I couldn't have because—

Q. All right. Now, when did you obtain your truck?

A. It was the first week of June, 1959.

Q. Approximately how many times did you actually use it to help out the Daily Breeze?

A. No more than, I think it was four.

Q. Were you always reimbursed for the use of your truck?

A. Not—twice I was and twice I wasn't.

Q. I believe your testimony was that at one point you said you didn't want to use your truck any more?

A. I told Dennis that because—

(Testimony of David Clark.)

Q. Dennis who? A. Dennis Daines.

Q. What did you tell him?

A. I told him that I didn't want to use it any more because my folks didn't want me to drive it because I didn't have it insured to cover me for the use of the truck.

Q. Was it your honest belief on December 19th and on December 21, that the insurance rates for your truck were going to be higher? A. Yes. [85]

Q. Was this belief based on conversations you had had with other people in the operation of the Daily Breeze who used their trucks?

A. Yes, that's what it would be, yes.

Mr. Bakaly: I object to that, Mr. Examiner. We can't meet that kind of testimony.

Trial Examiner: It does not matter what it is based on. He said that he believed it would be higher, and I think that the rest of it is inadmissible, Mr. Bakaly.

Mr. Mark: All right.

Q. (By Mr. Mark): You also testified, Dave, that you were interested in working less hours on Saturdays?

A. Yes.

Q. What was your normal schedule on a Saturday or supposed schedule on a Saturday?

Mr. Bakaly: Do you mean as a flyboy?

Q. (By Mr. Mark): When you first began, how many hours did you work on a Saturday?

A. Well, when I first began I was told—

Q. As a flyboy?

A. Well, I first started, the first Sunday paper started, I was told the paper would get off around 1:00 o'clock or so, you know, varied—

Q. When did the first Sunday payers start?

A. I don't know. It was five months, six months. It could [86] have been a longer time. Time goes so fast. I don't know. Maybe longer than that. I don't know.

Q. And you were told that you would have to work how many hours, please?

A. That I would go in, four in the afternoon and that I would get off from—well, varying, maybe earlier, maybe little later, around 1:00 o'clock.

Q. Were these hours satisfactory to you?

A. I figured that it was all right, because I could have Sunday off.

Q. Did you absolutely work these hours?

A. No.

Q. What hours did you actually work?

Trial Examiner: At what time is this?

Mr. Mark: We are restricting it to Saturday.

Trial Examiner: Yes, but I mean what year was it.

The Witness: 1959.

Trial Examiner: You are talking about 1959?

The Witness: Yes.

Trial Examiner: All right.

The Witness: Well, the earliest I have got out of there was around a quarter to four, but on the average it would be somewhere between 5:30 and 6:00 and there is a lot of times, quite a few times, I got off at 9:00, 10:00 in the morning.

Q. (By Mr. Mark): So when you testified that

(Testimony of David Clark.)

you were [87] interested in reducing the hours of work you were putting in on Saturdays, did you mean the actual hours on Saturday or the hours you carried over from working on a Saturday and into Sunday?

A. I meant that I didn't want to work—I mean I would like to work just like what they said. Maybe to 1:00 o'clock and that's it, but carrying on through Sunday, you know—

Q. What would you say the least hours you worked per week was?

A. The least?

Q. Yes.

Trial Examiner: I think we have gone over that, Mr. Mark. We have had a range of estimates.

Q. (By Mr. Mark): Well, in the event that you worked—

Trial Examiner: Are you talking just about Saturday or the total?

Mr. Mark: I am talking about the total hours.

Trial Examiner: That is in the record.

Mr. Mark: All right.

Q. (By Mr. Mark): In the event that you worked less than 40 hours, were you paid for 40 hours?

A. Yes.

Q. On what basis?

A. On the basis that on the weeks that I would work over 40 hours, those hours would be added on to the weeks that I [88] was short.

Q. In regard to your employment at Pacific Press, did you in any way make arrangements for that job prior to being let go? A. No.

(Testimony of David Clark.)

Q. When Mr. Collins told you that he would have to let you go, was it your understanding that you were discharged? A. Yes, it was.

Q. Was it at that time that you asked Mr. Collins whether he wanted you to stick around?

A. Yes.

Q. And Mr. Collins' reply to you was what?

A. It wasn't necessary.

Q. You testified that you were getting \$1.50 an hour?

A. That is right.

Q. And earlier you had testified that Mr. Collins told you they were paying union wages. Is \$1.50 an hour union wages for mail room clerks?

A. No.

Q. Is it under or over union wages?

A. It is under.

Q. How much under?

Mr. Bakaly: I don't see the materiality of this, Mr. Examiner.

Mr. Mark: I just wanted to clear up a piece of testimony, Mr. Trial Examiner, that had gotten into the record earlier [89] and that was that Mr. Clark testified that Mr. Collins stated he was paying union wages in regard to it.

Trial Examiner: Well, we really don't have him qualified to make the answer and also it is once removed. It is a statement attributable to Mr. Collins which might be more directly approached through him.

Mr. Mark: Certainly.

(Testimony of David Clark.)

Trial Examiner: Or someone with the union that knows what the union wage scale is.

Now, if this witness knows, and you can qualify him, then, why it is something else, of course.

Mr. Mark: Well, let me then ask this question?

Q. (By Mr. Mark): In the course of your employment at Pacific Press, have you been working as a mail room clerk?

A. Yes, I have been working as a mailer, yes.

Q. Are you getting union wages there?

A. Yes.

Q. What are those wages?

A. Well, for a seven-hour shift it is \$27.00 and something. I don't know.

Q. That is an average of over \$3.00 an hour?

A. Yes.

Trial Examiner: Is this the same type of work in general that you were doing?

The Witness: Yes. In general. It is magazines instead [90] of newspapers, but other than that it is the same.

Mr. Mark: I have no further questions.

Recross-Examination

Q. (By Mr. Bakaly): Did you know prior to December 19, 1959, that the mailers wages were over \$3.00 an hour in Los Angeles?

A. I didn't know if they were over \$3.00 an hour. No. I didn't know exactly. I know they paid more than what I made now.

Q. I didn't mean exactly. I mean about \$3.00 an hour?

(Testimony of David Clark.)

A. Yes. I figured they made about the same as printers or press—

Q. About double? A. Yes.

Q. You knew that before December 19th?

A. Yes.

Mr. Bakaly: I have no further questions.

Trial Examiner: Thank you, Mr. Clark.

(Witness excused.)

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: We will recess at this time until 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m.) [91]

After Recess

(Whereupon the hearing was resumed, pursuant to the taking of the recess, at 2:00 o'clock, p.m.)

Trial Examiner: Come to order, gentlemen.

Mr. Mark: The General Counsel would like to call Mr. Bernard Clark to the stand, please.

BERNARD CLARK

a witness called by and on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mark): Mr. Clark, would you state your full name, please.

A. Bernard J. Clark.

Q. What is your occupation? A. Printer.

(Testimony of Bernard Clark.)

Q. What is your relationship to David Clark?

A. David is my son.

Q. You have heard David testify that on Saturday, December 19th, he called you and informed you that he was offered a trainee position, is that correct?

A. Yes.

Q. And that you were to talk to Mr. Collins on that day, is that correct?

A. Yes.

Q. Did you meet Mr. Collins on Saturday, December 19th? [92]

A. Yes, I did.

Q. Have you known Mr. Collins before?

A. Yes. I have known him a good many years.

Q. Is it on a personal friendly basis?

A. Yes. We have been friends.

Q. At what time on December 19th did this meeting between you and Mr. Collins take place?

A. It was about 11:00 o'clock in the morning.

Q. Where did you meet, where did the meeting take place?

A. Well, I met him in the mail room, and he said, "Let's go over and get some coffee," and we went over across the street at the Spanish Inn, the restaurant there.

Q. Was it just you and Mr. Collins that went there?

A. Just the two of us went over there, yes.

Q. In the course of your conversation with Mr. Collins, where did you sit down? Did you sit down in a booth or at a table?

(Testimony of Bernard Clark.)

A. We were in a booth at about the farthest from the entrance to the door, going in there.

Q. Just the two of you were sitting in a booth at the time? A. Yes.

Q. Well, could you recount to us, please, now the conversation between you and Mr. Collins?

A. Well, I told him first that Dave told me Friday night that Mr. Collins had asked him if he had his card and he said no, and I said that was a misconception. Dave, that he didn't [93] understand the question, that he should have told him yes, while he didn't have his working card, he hadn't received his working card, he was a member of the union at that time.

Q. What did Mr. Collins say to that?

A. And he said, "Well, that's what shocked me." He says, "That's what I didn't understand."

And then I asked him, I said, "Well, how did you find out that Dave had joined the union."

He says, "Oh, somebody told me."

You know, I asked him if he would tell me who it was.

He said, "He didn't remember."

Q. Well, did you have any further conversation, discussion about the union at this time?

A. Well, he said, "Well, what is the union going to do?"

I told him, I said, "I am not a member of that union. I couldn't say," but I said, "They will probably contact you and set up an apprenticeship program for Dave and they will negotiate on that;" and, Mr. Collins, he said—well, he wasn't really against the union, but he

(Testimony of Bernard Clark.)

didn't want the union in the mail room because he wanted complete control of the mail room.

I told him, I said, "Well, even if it is union, it will still be your department, that you will be in control of it." [94]

Q. Did you discuss Dave's trainee position at this time?

A. Well, he come up, he said, "Well, they had a trainee program for him." He said his job would be to show up at the time to make sure that all the district route men were there. If there was not, he was to run their route. Then after they had been done, he was to drive around and make sure that the boys were out delivering their papers and do a few things like that.

Q. What did you tell Mr. Collins?

A. Well, I told him that that was all because we had had insurance, not trouble, but the insurance company, they really frown on insuring 19-year-old boys.

When we went to purchase the truck, it is a Ford Ranchero which could have been used both as a pleasure car or as a truck, they agreed to—

Mr. Bakaly: I move to strike that "they agreed" as hearsay and no foundation for who they is.

The Witness: The insurance company.

Trial Examiner: Excuse me, please. There is an objection, Mr. Clark. We will dispose of it before you answer.

It is my impression that it will not be determinative here as to whether this is actually correct, but—

Mr. Bakaly: The objection goes to foundation. I

(Testimony of Bernard Clark.)

don't know who he is talking about. It may not be hearsay.

Trial Examiner: It goes to motive rather than truth of facts, so would you detail for us before you go on to tell us [95] what information you got from the insurance company, who it was, and when you got the information, Mr. Clark.

The Witness: Oh, I called our agent from the Farmers Insurance Group.

Trial Examiner: Who is he if you know?

The Witness: Mr. Peterson, I believe is the head agent on that office.

Trial Examiner: When was that?

The Witness: That was the day that he bought the Ford Ranchero. That was sometime in June, the first week of June, I believe it was.

Trial Examiner: Of 1959?

The Witness: Of 1959.

Trial Examiner: Did you talk to Mr. Peterson?

The Witness: Yes. I talked to him on the phone before we purchased the car.

Trial Examiner: The subject concerned insurance on the car, is that correct?

The Witness: Yes.

Trial Examiner: All right. Tell us what you heard from Mr. Peterson on that occasion?

The Witness: He said that he would issue insurance on the car for David only if it would be used for pleasure; that he couldn't use it in business at all. They have it on the insurance papers that he was working at the Daily Breeze, and he called it [96] to my

(Testimony of Bernard Clark.)

attention. He says, "Now, he will not be delivering papers in that truck, will he;" and I said, "No."

Trial Examiner: Was that the only contact that you had with Mr. Peterson until after, if you had any more, but during the time that your son was still employed, up until the end of December?

The Witness: Yes. One other time.

Trial Examiner: In between that time?

The Witness: Yes. When I went back to pay the premiums on there.

Trial Examiner: When was this?

The Witness: That was, let's see, about four days later.

Trial Examiner: What was said on that occasion?

The Witness: He wanted to know definitely if the car was really used for pleasure or for business.

I told him for pleasure. He said that if it is used for business, that they would have to transfer us to another insurance company and the rate was much higher.

Trial Examiner: Did he tell you how much higher?

The Witness: He said from four hundred to \$450.00.

Q. (By Mr. Mark): Now, returning to your conversation with Mr. Collins, did you tell Mr. Collins then that it was your thought that David could not take the job because of the insurance?

A. Yes. That's right, and then he mentioned the sum of \$55.00, [97] and he was already making sixty, and so I, I told him he just couldn't take it; namely, because of the insurance on his truck.

(Testimony of Bernard Clark.)

Trial Examiner: Did you during this occasion that you are talking of with Mr. Collins, ask him how David would be reimbursed in connection with the use of his Ford Ranchero, if he used it in company business?

The Witness: No. He didn't say other than I am paying him other than fifty-five.

Mr. Bakaly: I move to strike the answer as non-responsive.

Trial Examiner: All right. The question is did you ask him how he would be reimbursed, to find out what the measure of reimbursement would be in connection with this, the use of his truck?

The Witness: No. That wasn't mentioned.

Q. (By Mr. Mark): When Mr. Collins described the trainee position to you, did he describe the duties and did he describe the reimbursement as being \$55.00 a week, is that correct? A. Yes.

Q. And there was nothing further said by Mr. Collins about any other kind of reimbursement for use of the truck? A. No.

Q. Did you tell him that David could not take the position?

A. That's right. I told him he couldn't take that position.

Q. What did Mr. Collins say?

A. He said, "Well, what am I going to do with him"? [98]

I just said, "Leave him on the present job. The job is still there."

Q. What did Mr. Collins say to that?

(Testimony of Bernard Clark.)

A. Well, he said he wanted to set up this training program.

I said, "Why don't you put someone else in there in that, in that the two jobs were not the same."

Q. What did Mr. Collins say to that?

A. Well, mostly his conversation come back, "What is the union going to do?"

Mr. Bakaly: I move to strike that as not responsive. I think we can move along a lot faster, Mr. Examiner, if the witness would be instructed to answer, to listen and then answer the question.

Trial Examiner: Yes. What these questions call for is what was said, and you generally characterize what he most likely talked about. Maybe eventually that will be an answer, but it isn't right now. We are still trying to get what you said to him and what he said to you insofar as you can recall.

Mr. Bakaly: I don't think the question has been answered. That was my objection, that there is a question asked about one subject and then he went on into another subject without giving an answer to whether that subject was covered or not. That was my objection. That question ought to be answered.

Trial Examiner: Do you have the question in mind?

Q. (By Mr. Mark): What did Mr. Collins say after you told [99] Mr. Collins, "Why don't you put someone else in that job?"

A. Well, He said he wanted Dave to have the job and still work at the press there.

(Testimony of Bernard Clark.)

Q. Did he say at that time that he was going to terminate Dave?

Mr. Bakaly: I object to that as leading and suggestive.

Trial Examiner: Let us find out what his memory is first.

Q. (By Mr. Mark): Did Mr. Collins say anything else after that?

A. Well, I don't know. We had just a lot of general conversation.

Q. How long did your conversation last?

A. The first part was about 15 minutes when we were by ourselves.

Q. Who joined you after 15 minutes?

A. Jim Hill.

Q. Who is Jim Hill?

A. As I understand it, he is a private contractor for the distribution of advertising papers published in the Daily Breeze.

Mr. Mark: May we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Mark): Mr. Clark, did you or did David contact Local 9 about joining the union? [100]

A. I did.

Q. You did? A. Yes.

Q. When was that?

A. Oh, shoot, I don't know. I can't recall the date. I contacted the vice-president of the Mailers Union that worked at the same place where I did.

(Testimony of Bernard Clark.)

Q. How long before the Saturday, December 19, would that have been?

A. Oh, probably four or five weeks.

Q. Four or five weeks?

A. Yes, the first time I talked to him.

Q. When did David join you?

A. Let's see. I thought it was on a Monday.

Q. That was the Monday prior to—

A. Yes. It was just one week before, of that Monday.

Q. At the time that you discussed or that you talked to the union representative, did you make any arrangements for Dave going to work at any other place? A. No.

Q. Was there any talk about David going to work at any other place? A. No.

Q. It was not then your purpose for David to obtain employment elsewhere by joining the union, was it? [101] A. No.

Mr. Bakaly: Mr. Examiner, I move to strike the answer for the purpose of an objection. The last three or four questions have all been leading and suggestive. The proper way to find out what was said in the conversation, is to ask what was said, not to direct the witness by this kind of questioning.

Trial Examiner: Of course this is something that wasn't said and it is rather hard to develop it in the record unless the question is fairly indicative of what the specific topic is. This was something that was not—

Mr. Bakaly: We all know.

Trial Examiner: Well—

(Testimony of Bernard Clark.)

Mr. Bakaly: We have to know what was said before you can find out what wasn't said. He hadn't said what was said in this conversation.

Trial Examiner: This is the conversation between the representative of the Mailers Union and Mr. Clark?

Mr. Bakaly: That is right, wherein he contacted the union. That was his testimony.

Trial Examiner: Well, it might obviate some cross-examination, if nothing else, Mr. Mark, if we get a recital of what Mr. Clark recalls about it.

Q. (By Mr. Mark): You say four, five weeks prior to the Saturday you had talked to the union representative? A. Yes. [102]

Q. Do you recall who you talked to?

A. Mr. Babior.

Q. What is Mr. Babior's title?

A. He is vice-president of the Mailers Union.

Q. Is that Local 9?

A. Local 9.

Q. At the time you talked to Mr. Babior, did you talk to him in person or by the phone?

A. In person.

Q. Where?

A. Roger McDonald Publishing Company.

Q. Was there anybody else present at the time of this conversation?

A. There were other people around us. I mean no one participated in this conversation except the two of us.

Q. Did you talk about Dave's joining the union at that time?

(Testimony of Bernard Clark.)

A. No, not of Dave's joining the union.

Trial Examiner: Can we have what they talked about, please?

Q. (By Mr. Mark): What did you talk about on that occasion?

A. Well to inform them, to investigate working conditions and the South Bay Dailey Breeze, and my boy David who was 19 and two young teenage boys of working around or working 12, 14, 16 hours shifts on Saturday and Sunday.

Q. Was that the entire conversation at that time?
[103]

A. And wanted them to look into it and see if something couldn't be done about it.

Q. What did Mr. Babior say?

A. He said that he would take it up with the other officers and see about it.

Q. Did you talk to Mr. Babior at any other time thereafter?

A. I had seen him in the course of our work, and occasionally we would comment on it, that they was going to look into the matter and investigate it.

Q. Well, did you have any other conversations with Mr. Babior? Did you have any other conversations with him after that one?

A. I think probably once a week for the next four weeks.

Q. Were they long conversations or short conversations?

A. No, just short conversations.

(Testimony of Bernard Clark.)

Q. How many of these conversations took place, would you say?

A. I think there were four.

Q. Four. And the second of these conversations, did you mention anything about David joining the union?

A. Mr. Babior asked me if I thought Dave would be willing to join the union if he was, if the opportunity was presented to him, and I said I thought he would.

Q. Did you talk to Mr. Babior again on another time?

A. Yes. I just asked him then if the union was investigating it any more? And he said that they had talked about it at some other meeting. [104]

Q. When was this in terms of, you know, in relationship to Saturday, December 19? How long before that?

A. Well, let's see. The first time would be five, approximately five weeks before that Saturday.

Q. And the second conversation?

A. Would be one week later from the first one there.

Q. And these conversations occurred once every week?

A. Yes. It was on Thursday nights when Mr. Babior was around there that I seen him.

Q. When David joined the union, where did he join?

A. At our home.

Q. Was Mr. Babior present at the time?

A. No. Mr. Leathem.

(Testimony of Bernard Clark.)

Q. Mr. Who?

A. Leathem.

Q. What is Mr. Leathem's title?

A. He is an organizer for the Mailers Union No. 9.

Q. When was this?

A. That was the Monday, well, before—that was just one week before he was let go that Monday.

Mr. Bakaly: I understand that these are hearsay conversations as to the respondent, and I suppose the only purpose is to show why he had his son join the union. Is that right? I mean these statements are certainly not binding upon the company that there was any effort made of organization or [105] anything like that.

Trial Examiner: Well, the company's knowledge, of course, has to be shown, independently.

Mr. Bakaly: Relating to the statements, that is right.

Trial Examiner: But this series of questions arose from the fact that we wanted—

Mr. Bakaly: To know what was said, that is right.

Trial Examiner: And also what was not said.

Mr. Bakaly: That is right. We have gone on now to other conversations, and I just wanted to make that clear. I am not objecting to the testimony.

Q. (By Mr. Mark): Now, this particular Monday, Mr. Leathem was at your home. What time was that?

A. That was probably 11:00 o'clock in the morning.

Q. In the morning? A. Yes.

Q. Who was present at your home at that time?

(Testimony of Bernard Clark.)

A. My wife and myself and David.

Q. Did David sign a card at that time?

A. Yes.

Q. Did he tender any initiation fees?

A. Yes.

Q. Did he receive any card at that time from the union?

A. He received, oh, some form that he signed. I didn't, I didn't read it, though. [106]

Q. In the course of all these conversations with the union representatives, whether Mr. Babior or Mr. Leathem, was there at any time any mention made about procuring a job for David through the union?

A. No.

Q. Was there any mention made of any arrangements in the future to procure the job for David through the union?

A. Mr. Leathem said that if he was discharged due to union activity that the union would probably procure him a couple of day's work a week, so he would have some money to meet his obligations.

Q. But there were no arrangements made whatsoever for David to obtain employment at any other place? A. No.

Q. Now, I am talking about the period prior to December 19. Now, after your conversation with Mr. Collins, did you talk to the union representative at other times?

A. Yes. When David come home and said that he had been discharged.

Q. When was this?

(Testimony of Bernard Clark.)

A. That was Monday. I don't know what the date would be.

Q. Is this Monday, December 21st we are talking about? A. Yes.

Q. How did you contact the union representative?

A. I called union headquarters and asked for Mr. Mathiesen. [107]

Q. Who is Mr. Mathiesen?

A. He is the president of the Mailers Local No. 9.

Q. Did you talk to Mr. Mathiesen at the time?

A. Yes, I did.

Q. What time was this?

A. That was about 2:30 in the afternoon, I believe.

Q. Were you calling from your home or from work?

A. Yes, from home.

Q. Was David present at the time?

A. Yes.

Q. Were arrangements made at that time for David to go to work? A. Yes.

Q. Where was David to go to work?

A. He was working one shift at Pacific Press that night.

Q. Prior to this time, there had been no arrangements made for David to go to work for any other employer than South Bay Daily Breeze?

A. No, none.

Q. Returning to the conversation with Mr. Collins on the 19th of December, you say the first part of the conversation lasted 15 minutes and then you were joined by Mr. Hill?

(Testimony of Bernard Clark.)

A. Yes.

Q. Is that correct?

A. Yes.

Q. How long did the entire conversation last? [108]

A. Approximately 45 minutes.

Q. In the course of that conversation, how long would you say you talked about the trainee position?

A. That was taken a very few minutes on that. There was very little time spent on that.

Q. What was the other subject of conversation at that time about, if any?

A. About the Mailers Union.

Q. And—

Trial Examiner: Do we have everything that was said by the people that participated in the meeting about the Mailers Union?

The Witness: Yes.

Trial Examiner: Have you told us everything that was said?

The Witness: Yes.

Trial Examiner: By Mr. Collins and yourself and this other gentleman by the Mailers Union?

The Witness: After he joined us, that was just general conversation. He joined into a lot of things, you know.

Trial Examiner: Well, I don't know unless you tell me, Mr. Clark, and we can't tell—the only way we can at least obtain from you what was said is if you will tell us.

The Witness: What Mr. Hill said or things like that?

(Testimony of Bernard Clark.)

Trial Examiner: Well, you said there was a substantial amount of time devoted to the topic of the Mailers Union. [109] Now, other than your statement, I think was the only thing bearing on that topic which said Mr. Collins wanted to know what would happen. I don't think there has been anything related in your testimony as to who said what in connection with the Mailers Union on this occasion.

The Witness: I really don't follow that question.

Trial Examiner: Well, maybe the reporter can read it, and I can listen to see how I might improve it.

(Record read.)

Trial Examiner: Do you understand that, Mr. Clark?

The Witness: Well, let's see. No, I really don't.

Trial Examiner: You don't understand the question?

The Witness: No, I really don't.

Trial Examiner: Now, stating it another way, perhaps, you have told us that there was some, quite a bit of talk about it, but you haven't told us what was said and who said it about the Mailers Union.

The Witness: Oh, I see.

Trial Examiner: And that is what we are here after.

The Witness: Well, other than Mr. Collins wanting to know what the union was going to do, I said that they would contact him, and then when Mr. Hill come in, start talking about the union, he didn't think it was a good idea. He had worked in a, he said there

(Testimony of Bernard Clark.)

had been a union mailers, and he didn't like it there, and— [110]

Trial Examiner: Where is this?

The Witness: Where he said that he had worked at a place. I don't know.

Trial Examiner: I see.

The Witness: That, that's when Mr. Collins, he just, he didn't want to give up control of the mail room. I told him that he didn't have to give up the control of the mail room. He could still be in charge of it.

Then Mr. Hill went on telling how he had trouble with his 100 to 110 boys at that advertiser he was telling us about, about the trouble there; that was, took about the balance of the conversation.

Trial Examiner: All right.

Q. (By Mr. Mark): So that part of the conversation, part of the time of the conversation was taken up by Mr. Hill's statements about trouble he was personally having and nothing to do with South Bay Daily Breeze, is that correct?

A. No, that is right.

Q. Did Mr. Collins at that time say what he was going to do with David and the flyboy job?

A. No. He kept asking me, he said, "Well, what will I do with David," and I replied every time, I said, "Just leave him in the present job. The job is still there."

Q. What did he say?

A. He said, well, that he wanted to get the trainee program [111] started, and he wanted Dave to

(Testimony of Bernard Clark.)

take the job, but I told him that he would just, couldn't do it.

Q. Did he say anything else after that?

A. No. I left and he, well, I mean, I left, he said, "Well, we will work it out some way."

That was the last word I had with Mr. Collins.

Q. Were his last words, "Well, we will work it out some way?"

A. Yes.

Q. Now, after David's discharge, did you contact any insurance agent in regard to the rates?

Mr. Bakaly: I object as assuming facts not in evidence.

Mr. Mark: I think this is—

Trial Examiner: Well, I think it is referring to the use of the word "discharge".

Mr. Bakaly: That is exactly right.

Mr. Mark: I am sorry.

Trial Examiner: After his termination.

Q. (By Mr. Mark): After his termination, did you contact any insurance in regard to insurance rates on David's transportation?

A. I went back to the insurance again and had a conversation with Mr. Abrams, I believe.

Q. Is that Mr. Abrams of the Labor Board?

A. Of the Labor Board. He said he didn't think that the insurance was any higher. [112]

Q. Just a minute, please. I am not following you. Is it Mr. Petersen or Mr. Abrams you are talking about?

A. Mr. Abrams, when I was having a conversation here with him.

(Testimony of Bernard Clark.)

Q. I see.

A. And we told him about the reason that he couldn't take it was because of insurance, and Mr. Abrams said that he didn't know that it was any higher. He said that he had talked to an insurance agent, and he said it would probably be about the same.

Q. Now when was this conversation with Mr. Abrams?

A. I don't know. You got it in your files there.

Q. Was this after David's termination?

A. Yes.

Q. Was this after you had filed the charge or David had filed the charge? A. Yes.

Q. Did you thereafter talk to an insurance agent?

A. Yes, I did.

Q. Did you talk to him about the rates on the Ranchero truck? A. Yes.

Q. Was this the insurance agent you spoke of?

A. No.

Q. Who was it?

A. It was one of the agents in the office there. I don't know his name. [113]

Q. At whose office?

A. Mr. Peterson's office.

Q. What were you told at that time? Did you contact him personally or by phone?

A. No. I went in and seen him.

Q. I see.

A. And I told him the statement that Mr. Abrams had told me, that the insurance would not be any higher, and he said that they didn't have any insurance that

(Testimony of Bernard Clark.)

covered that, that they would have to contact a special insurance company, that there is only four companies that carry that insurance, is what he told me; and they would write the coverage on there. He said it would run between four hundred and four hundred and fifty dollars.

Q. Was it your honest belief at the time you talked with Mr. Collins that the insurance rates on David's truck were higher?

A. Yes, because of the conversations I had when we were going to purchase the truck and then the conversation I had when I went over to pay the premium on that.

Q. These are the conversations you have already related in your former testimony?

A. Yes.

Mr. Mark: I have no further questions.

Cross-Examination

Q. (By Mr. Bakaly): You just stated you made some statements [114-115] to the National Labor Relations Board, made an affidavit? A. Yes.

Mr. Bakaly: I would like to demand the production of all statements made by this witness, and I request a short recess.

Mr. Mark: May the record reflect that the General Counsel is providing the statement requested.

Mr. Bakaly: Yes.

Mr. Mark: That is the only one.

Trial Examiner: We will take a short recess.

(Short recess.) [116]

(Testimony of Bernard Clark.)

Cross-Examination (Continued)

Trial Examiner: On the record.

Q. (By Mr. Bakaly): Who is the registered owner of the Rancho automobile? A. I am.

Q. You and anyone else? A. My wife.

Q. Your son, David, is not one of the registered owners? A. No.

Q. Who drives the car most of the time?

A. David.

Q. Do you have any other automobiles?

A. Yes.

Q. Is the Farmers and Merchants Insurance Company aware of the fact that David drives your car?

A. Yes. He drives the Rancho.

Q. Are they aware of that fact? A. Yes.

Q. You have told them that? A. Yes.

Q. And you pay the rate applicable to a single, unmarried male, under the age of twenty-one?

A. Yes.

Q. On that car? A. Yes. [117]

Q. How much insurance do you pay on that car?

A. I believe it's \$280, I believe.

Q. For that car?

A. Yes.

Q. Or for all of your cars?

A. No, for that one.

Q. What does that coverage include?

A. Fire, theft, \$100 deductible, comprehensive, I believe.

Q. That would be the fire and theft?

A. Yes.

(Testimony of Bernard Clark.)

Q. How much personal liability and property damage?

A. \$10,000, \$20,000.

Mr. Bakaly: I didn't hear that, with the door closing.

Trial Examiner: Ten and twenty.

Q. (By Mr. Bakaly): That is insurance with the Farmers and Merchants Insurance Company?

A. The Farmers—Farmers Insurance Group, it's called.

Q. And that is \$280 annually, per year?

A. Yes. Of course, I might say those aren't really exact figures, it's right close in there.

It could be a few dollars, one way or the other, more or less, but just a few dollars.

Q. You testified that they told you that if David drove the car in business, the premium would be \$480?

A. No, they said between \$400 and \$450, but they didn't [118] carry it at that, that they would have to transfer his insurance to another company

Q. Transfer his or yours?

A. The insurance on the Ford Ranchero.

Q. Who is named as the insured in the policy?

A. I guess I am. I don't know.

Mr. Mark: May I just interpose here.

If there is any question about this, if there is going to be any contention made, we can ask Mr. Clark to return with the policy, that would be the best evidence.

Trial Examiner: Or else give it to you.

Mr. Bakaly: I think that would probably be satisfactory. I'm about finished with these questions, anyway.

(Testimony of Bernard Clark.)

Trial Examiner: All right.

Would you make that available to Mr. Mark, your policy, so that we can get more definite information with respect as to who is being named the insured and so forth?

The Witness: I can do that. I'm quite sure, I mean, the insurance policy is under my name, but it has the rating, it's what they call a No. 2 rating.

That's so a person, a single person, an unmarried man under twenty-five, can drive the car.

I am quite sure the insurance company has David's name as the one on there.

Mr. Bakaly: Well, your policy will show us, whatever it is. [119]

Q. (By Mr. Bakaly): You testified that you are a printer? A. Yes.

Q. Are you a member of the International Typographical Workers Union? A. Yes.

Q. Commonly known as the ITU? A. Yes.

Q. What local? A. 174.

Q. That's a printer local? A. Yes.

Q. Do you know Howard Collins? A. Yes.

Q. How long have you known him?

A. About six years.

Q. Isn't it correct that your relationship with him has been one of friendship in the last six years?

A. That's right.

Q. You are close, personal friends?

A. That's right.

Q. You used to stop in and have coffee with Mr. Collins on many occasions?

(Testimony of Bernard Clark.)

A. That's right.

Q. During the whole six-year period?

A. Yes. [120]

Q. You have talked with him on numerous occasions about your son David?

A. That's right.

Q. You were interested, are interested in your son continuing in school?

A. That's right.

Q. Is that correct? A. Yes.

Q. Did you have a conversation with Mr. Collins sometime in June of 1959 concerning your son's staying in school? A. That's right.

Q. At that time your son had indicated that he wanted to quit school and go to work?

A. Yes.

Q. To you, I mean? A. Yes.

Q. And you solicited Mr. Collins' help in keeping David in school, is that correct?

A. That's right.

Q. One of the reasons that David wanted to quit school was so that he would have more time for rest and relaxation, isn't that correct?

A. His argument at that time was that he was tired of studying, that's all.

Q. He likes to surf, doesn't he? [121]

A. Yes.

Q. And he wanted to have more time in which to engage in that hobby, didn't he?

A. Well, he never mentioned that. He was mostly—he was just tired of studying.

(Testimony of Bernard Clark.)

Q. Anyway, then it was your interest to have him earn as much money as he could in as few hours as he could, isn't that correct?

A. That's right.

Q. It could keep him, give him more time for school, and still more time for him to have some rest and relaxation so he wouldn't want to quit school, isn't that correct?

A. That's right.

Q. Did Mr. Collins say that he would do everything he could to talk David into staying in school?

A. Sure.

Q. So, was Dave still attending school?

A. Yes.

Q. You, I believe, testified to a conversation with Mr. Clark on December 19, 1959, with Mr. Collins, is that correct?

A. Yes.

Q. That conversation took place in a coffee shop, is that correct?

A. Yes. [122]

Q. And the first thing that was said in that conversation, I believe you testified to, was you started talking about the conversation that Mr. Collins had with David the day before regarding the union, is that right?

A. Yes.

Q. That was the first thing that was said?

A. Yes.

Q. Is it true, Mr. Collins, that the first thing that was said was that Mr. Collins explain the trainee job to you?

A. No.

Mr. Mark: I object. I think that the witness has

(Testimony of Bernard Clark.)

testified that the first thing he did say was something about the union.

Trial Examiner: Well, this is cross-examination.

Mr. Bakaly: This is cross-examination, Counsel.

Trial Examiner: He is asking, in effect, isn't it a fact that something else occurred; that's the tenor of the question.

Mr. Bakaly: That's right.

Q. (By Mr. Bakaly): And your answer is that that did not occur first?

A. No. The first conversation's going across the street there, that he was saying that he sure had been having trouble with keeping men in there, but—

Q. With what? [123]

A. With keeping men on the job on those district routes.

Q. Now, you are changing your testimony.

I want to know all of the conversations that you had with Mr. Collins on the 19th.

This is what you have been asked about.

The first part of the conversation, then, was a statement by Mr. Collins of the trainee jobs, isn't that correct? A. No.

Q. I believe you just said that he complained about the district managers' quitting and so forth, isn't that true?

A. No. He just complained about the district managers had been quitting on him.

Q. Isn't it also true that he said that this trainee program wasn't—was his way of permitting the confusion that resulted when district managers quit?

(Testimony of Bernard Clark.)

A. No. That come up later.

Q. You mean he just, out of the blue, Mr. Clark complained about the district managers quitting and that is all he said?

A. When we were walking across the street there, yes, the first part of the conversation when we sat down in the coffee shop and I told him about Dave joining the union.

Q. And up to this point, then, nothing had been said about the trainee program? A. No. [124]

Q. But it was your purpose to come down here and talk to Mr. Clark about the training program—

A. Mr. Collins—

Q. —Mr. Collins, wasn't it?

Was that your purpose in coming down there? Isn't that what your son called you down for?

A. That's right.

Q. And that wasn't said at all?

A. Not the very first time.

Q. The very first part of the conversation?

A. No, sir. I wanted to clear up the confusion about him joining the union or not.

Q. During this conversation in which you testified to at great length under direct examination, was anything said about this trainee job? A. Yes.

Q. Were you told that the pay would be \$55 a week for—

A. Yes.

Q. —for 33 to 35 hours, something like that?

A. He didn't mention any hours to me.

(Testimony of Bernard Clark.)

Q. You knew it would be less hours than what he was working for then?

A. No.

Q. You did not know that? A. No. [125]

Q. Dave did not tell you that?

A. No. I hadn't talked to him about that.

Q. Well, then, did you know that the rate of pay was a dollar sixty-seven an hour?

A. Later on, he said that's what it was.

But—

Q. During most of the conversation?

A. Yes, but most of the time he said it was \$55 a week.

Q. All right.

Putting aside the question about the insurance and the mileage for the moment, you didn't complain about the amount of money of this trainee job, did you?

A. No.

Q. Your sole complaint was the high cost of car insurance and the mileage, isn't that correct?

A. Yes.

Q. Did you say anything about the fact that Dave could not keep his job as a fly boy at this conversation?

A. That he couldn't keep it?

Q. That's right.

A. No. I said he could keep it.

Q. Didn't Mr. Collins say to you at this conversation that—or hadn't Dave told you—that if he didn't take the training job, that it would be offered to somebody else who would start at the position of fly boy; didn't you know that [126] at the time?

(Testimony of Bernard Clark.)

A. No. He brought that out at the conversations. I hadn't talked with anyone about that,—

Trial Examiner: Mr. Clark—

A. —except on the phone.

Trial Examiner: —you came down there following a telephone conversation with David, isn't that correct?

The Witness: Yes.

Trial Examiner: To talk about the training job?

The Witness: Yes.

Trial Examiner: All right.

Q. (By Mr. Bakaly): Didn't you testify, or am I imagining something that you testified, that David told you that he was going to be let go and you came down to talk about it?

A. That was on that phone conversation Saturday—

Q. On the 19th? A. Yes, sir; Saturday.

Q. Yes. Well then, you did know that if he didn't take the trainee's job he was going to be let out at the fly boy job, didn't you?

A. His conversation over the phone was that he said they would come up with some kind of a trainee program.

If he didn't take it, they were going to let him go.

Mr. Collins wanted to talk to me.

Q. So there was a conversation as to why he wouldn't—would [127] have to be let go and you were told by Mr. Collins that they would let him go because of the fact that the trainee program's first step was that the flyboy job and if Mr. Clark didn't want to go on the second step for which he was qualified, they

(Testimony of Bernard Clark.)

would hire somebody else for the first step of the fly boy job; wasn't that told you?

Mr. Mark: I will object. That question is a little unintelligible to me, and I have lost you.

Trial Examiner: Well, let's find out if Mr. Clark understood the question, then you can have it read in case you want to interpose an objection on that, Mr. Mark.

Can you understand that last question?

The Witness: Yes, I think so.

Trial Examiner: All right, will you read it for Mr. Mark's benefit, please?

(Record read.)

Mr. Mark: Was that told by Mr. Collins or Mr. Clark?

Earlier in there you have Mr. Collins.

Mr. Bakaly: Told to him by Collins.

That's the only other person concerned.

Trial Examiner: I think the very latter part of the question probably should read "The first step of the trainee program," rather than the ". . . first step of the fly boy job."

Mr. Bakaly: Fine, correct.

Q. (By Mr. Bakaly): I think you understand what I'm talking [128] about. A. Yes.

Q. Wasn't that said to you?

A. Do you want my reply to Mr. Collins now?

Trial Examiner: First of all, did Mr. Collins tell you that?

The Witness: No. In other words, the thing was Mr. Collins says that they would have the trainee pro-

(Testimony of Bernard Clark.)

gram, that they wanted to start him out as a fly boy and work up to being a district manager in circulation.

I pointed out to him at that time, the two jobs were not compatible; one was mail work and one was circulation, they didn't meet at all.

I mean, there is two different branches entirely there.

But knowing their work wouldn't qualify you to go out and be a circular—distributor or increase circulation or anything like that.

Q. (By Mr. Bakaly): Didn't Mr. Clark say that all of his circulation managers knew that the work that David had done or learned it while they became circulation managers—didn't he tell you that?

A. No.

Q. Didn't he tell you that he wanted to have his district managers know the fly boy work?

A. Well, he thought it would be a good idea to know that. [129]

Q. This is not a big metropolitan newspaper, is it?

A. Yes.

Q. It is? A. Yes.

Q. A big metropolitan newspaper, with a big large mailroom staff?

A. Well, maybe we ought to bring the Daily Breeze up here and read their own publicity.

Mr. Bakaly: I don't want you to argue with me. I just want you to answer my questions.

Q. (By Mr. Bakaly): There was not a large mailroom staff at the Daily Breeze, was there?

A. No.

(Testimony of Bernard Clark.)

Q. There was one full-time mailroom employee, and that was your son, isn't that correct? A. Yes.

Q. Okay. He wasn't a full-time employee, was he?

A. Well, my assumption—

Q. He wasn't working 24 hours a day?

A. Over forty hours a week.

Q. And overtime on Saturdays?

A. He was working seven days a week. Let's put it that way.

Trial Examiner: Well, again—

Q. (By Mr. Bakaly): Didn't you state to Mr.—
excuse me. [130]

Did you have a question, Mr. Examiner?

I'm sorry.

Trial Examiner: We had that subject come up before, what is a full-time employee.

I think the record reflects the hours approximately ten working.

Mr. Bakaly: I think so.

Q. (By Mr. Bakaly): I take it that you did not state to Mr. Collins at this conversation on the 19th that you and David lined up a job in Los Angeles where Dave could work as a mailer two or three shifts a week and make more money than he could make at the Daily Breeze? A. No, we hadn't.

Q. Isn't it true that you stated that you would think it over over the weekend and that you would have Dave contact Mr. Collins on Monday?

A. No, no. I had made a definite statement then.

Q. You knew then on Saturday, the 19th, that Dave was going to be let off on Monday?

(Testimony of Bernard Clark.)

A. No, I was under the idea that he still had the job of being a fly boy there.

Q. Now, you say that you had some conversations with a representative of the ITU mailers' union prior to this, is that correct? A. Yes. [131]

Q. Isn't it true, Mr. Clark, that you went to—what is the man's name—Babio? A. Yes.

Q. You went to Mr. Babio in an effort to have him obtain a job for your son as a part-time mailer in Los Angeles? A. No.

Mr. Leathem: B-a-b-i-o-r.

Mr. Bakaly: B-a-b-i-o-r.

Q. (By Mr. Bakaly): What was the answer?

A. No.

Q. You said the reason you went to see Mr. Babior was to complain about the working conditions at the Daily Breeze? A. Yes.

Q. You had never complained to Howard Collins about these working conditions, though, had you?

A. Yes.

Q. You had? A. Yes.

Q. On what occasions?

A. On many times when he was over drinking coffee, I talked to him about those hours, long hours that they worked.

Q. On Saturday? A. Yes.

Mr. Bakaly: Just a moment, please.

Q. (By Mr. Bakaly): At one time, did Dave work both Wednesday [132] and Saturday nights?

A. Yes.

Q. And you came up—you came to Mr. Collins and

(Testimony of Bernard Clark.)

requested that he not work on Wednesday night because it was interfering with his school, isn't that correct?

A. I don't recall that.

Q. You don't recall that? A. No, I don't.

Q. You recall your complaining about the long hours on Saturday, but you don't recall about complaining about working Wednesday night?

A. No, I don't recall that.

Q. Isn't it true that you didn't complain about the length of hours that Dave was working at all?

A. No. I did complain.

Q. To Mr. Collins? A. Yes.

Q. And he did nothing about it?

A. No. He said, "Well, he is going to work on it."

Q. When was this conversation?

A. Well, it started right shortly after they went on the Sunday paper. When they started working the seven days a week.

Q. When was that?

A. That was approximately six months ago. [133]

Q. And nothing was done by Mr. Collins about it in six months? A. No.

Q. And you continued having coffee with him and so forth? A. Sure.

Q. Continued being friendly with him?

A. Sure.

Q. Did you discuss with Mr. Collins on the 19th the fact that the new job would take Dave off of Saturday night work, the trainee job? A. No.

Q. Nothing was said about that? A. No.

Q. Did you have any conversations with any repré-

(Testimony of Bernard Clark.)

representatives of the Mailers' Union during the periods from December 19th to noon on December 21, 1959?

A. Well, that's what—

Trial Examiner: The 19th would be the Saturday that you talked to Mr. Collins, and the 21st would be the following Monday?

The Witness: No, I didn't talk to them at all.

Mr. Bakaly: I have no further questions at this time.

Redirect Examination

Q. (By Mr. Mark): Mr. Clark, when did David begin working late on Saturday nights?

A. When they went on the—had the Sunday paper.

Q. When was this? [134]

Approximately six months before.

Q. Approximately six months before. Was David working on Sunday nights at that time?

A. No, no. He wasn't working Wednesday nights.

Q. Do you recall how long before he had stopped working on Wednesday nights?

A. No, I can't, really. I'm sorry.

Q. He was not working on Wednesday night at the time they instituted the Sunday edition at the time that he was putting in these long hours on Saturday?

A. No.

Q. In regard to the insurance, does Dave contribute money toward the upkeep of the insurance?

A. He pays for it, yes.

Q. So, actually, when you stated that you paid for the insurance, you mean the insurance was in your name?

A. Yes.

(Testimony of Bernard Clark.)

Q. The moneys to pay for it came from Dave's salary? A. Yes.

Q. You say that you had coffee with Mr. Collins many of the times and have talked to him many other times about keeping Dave at the South Bay Daily Breeze? A. Yes.

Q. Was there any mention made about the trainee position at any time prior to this? [135]

A. No.

Q. When I am talking about "this," I mean December 19th. A. Oh.

Q. In regard to Mr. Collins' complaining about the turnover in district managers, you say that this occurred in the course of transit from the Daily Breeze Building over to the Spanish Inn, is that correct?

A. Yes.

Q. And that immediately upon entering the Spanish Inn you started talking about the union, is this correct?

A. Yes.

Q. And you did not bring up the trainee position until later in the conversation? A. That's right.

Mr. Mark: I have no further question.

Recross-Examination

Q. (By Mr. Bakaly): Does Dave also pay you for the car? A. Yes.

Q. Pay you so much a month? A. Yes.

Q. Has he paid you completely for it yet?

A. No.

Q. Are you the legal owner of the car as well as the registered owner? A. No. [136]

Q. Who pays the legal owner; you or David?

(Testimony of Bernard Clark.)

A. Well, I send a check over there.

He doesn't have a checking account, so I send a check for it.

Q. But he pays you the amount of the payment to the legal owner? A. Yes.

Q. Isn't it true that the car is in your name so that you will be able to get, among other things, lower insurance rates?

A. There is no reduction on that insurance rate but it's a teenage boy driving.

Q. Even though the car is in your name?

A. That's right.

Mr. Bakaly: No further questions.

Trial Examiner: Even though you have two cars?

The Witness: No, there is still no reduction.

I was inquiring about that. I was hoping.

Trial Examiner: Just a minute.

Do you have any other questions?

Mr. Mark: I have no more questions.

Trial Examiner: Do you intend to call more witnesses?

Mr. Mark: Well, Mr. Trial Examiner—

Trial Examiner: Excuse me. The reason I asked, I'll tell you in advance. [137]

Implicit in this record, probably, is the question of union jurisdiction.

Mr. Clark here, has been a member of the ITU for a long time, and unless you are going to develop it, I was going to find out whether he knew what the practice in this area is with respect to what type of work the mailers' division of the ITU includes.

(Testimony of Bernard Clark.)

Mr. Mark: No. That particular point I wasn't going to go into.

Trial Examiner: I beg your pardon.

Mr. Mark: I hadn't planned on going into that point or to call witnesses on it.

Trial Examiner: Well, I regard it as essential in making—even to make a prima facie case to ascertain that, the aspect of it; otherwise I don't see how there is any basis for—on the evidence that I have heard so far for finding discriminatory motivation.

Mr. Mark: May I have just a few minutes?

Trial Examiner: Surely.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Mark): Mr. Clark, you are a member of what union? A. ITU, No. 174.

Q. That's a printer union? A. Yes. [138]

Q. Does your union include among its constituents and members those people who work in mailing rooms, mailing departments in newspapers or publications?

Mr. Bakaly: You mean his local union or the international?

Mr. Mark: His local.

The Witness: No, not the local.

We have two different locals, but we have one international body.

Q. (By Mr. Mark): Under whose jurisdiction does the mailing room come?

A. Under the mailers.

Mr. Bakaly: I will object to that. This witness is not competent to answer that question.

(Testimony of Bernard Clark.)

There is no foundation that he has any familiarity with the union contracts or any official union or any similar capacity; no foundation laid for that kind of a question. He is just an employee, a printer.

Trial Examiner: Perhaps and perhaps not.

Mr. Bakaly: As far as the record now stands, that's all he is.

I'm sorry, yes; perhaps he does.

Trial Examiner: I wonder if you would probe the question of Mr. Clark's familiarity with the composition of the people that are in the mailers' department of the ITU or the mailers' [139] local, if he knows, in this area.

Q. (By Mr. Mark): Mr. Clark, are you familiar with the type of personnel who come under the mailers' union jurisdiction? A. Yes.

Mr. Bakaly: I would like to take the witness on voir dire, then, Mr. Examiner.

I would like to find out the basis for this familiarity. If the counsel for the general counsel is not going to lay a foundation, I would like to lay it or try to lay it.

Trial Examiner: Well, except in the case the document, we usually have anticipatory cross-examination on voir dire of this type of a situation.

I do think that—

Mr. Bakaly: Maybe you would ask the questions, then.

I don't care who asks them.

Apparently the general counsel doesn't want to ask them.

(Testimony of Bernard Clark.)

I want to know the basis for his familiarity. This is just a conclusion.

Trial Examiner: If Mr. Mark will indulge me, I will ask Mr. Clark a few questions at this point.

Examination

Q. (By Mr. Kennedy): You have been a member of the ITU Printers' Union for how long?

A. Twenty-one years.

Q. How long have you worked in the Southern California area? [140]

A. All but about three years of that.

Q. Is there more than one local in the Southern California area with more than one Printers' Union, I mean Printers' local?

A. Well, 174 covers greater Los Angeles.

Q. And that's the union that you are a member of?

A. That is the one I belong to.

Q. Does that include Redondo Beach?

A. No, Redondo Beach.

It belongs to the San Pedro local. [141]

Q. In the course of your employment as a printer, do you work in plants where there are employees who are members of the I. T. U. but are members of the Mailers Local? A. Yes.

Mr. Bakaly: Could I have the question, please? I'm sorry.

It's hard to hear.

Trial Examiner: I will speak louder.

Will you read it.

(Record read.)

(Testimony of Bernard Clark.)

Q. (By Trial Examiner): Where do you work now? I know you told me, but it escapes me.

A. With Rodgers and McDonald.

Q. Do they have members of Mailers Union No. 9 working? A. Yes.

Mr. Bakaly: Working where?

The Witness: At Rodgers and McDonald, where I work.

Q. (By Trial Examiner): Where is that located?

A. 2621 West 54th Street.

Q. In Los Angeles?

A. In Los Angeles.

Q. Do you of your own personal knowledge whether the Mailers Union No. 9 of the I. T. U. has the territory including Redondo Beach and more specifically the area where this South Bay Daily Breeze is located? [142]

A. It's my understanding that Local 9 has jurisdiction in that area.

Mr. Bakaly: I move we strike it.

Q. (By Trial Examiner): On what do you base that understanding?

A. Well, on the conversations that I had with the mailers.

Q. Do you know of any plans or printing—of publishing or printing facilities in that area where Mailers Union No. 9 has members in the area—and then we will have to get that more definite—but I'll ask you more generally where the plant of the Daily Breeze is located?

A. Well, I understand that they have two union

(Testimony of Bernard Clark.)

mailers that work there on Wednesday nights—that's been told to me—

Mr. Bakaly: Under a union contract?

A: The Witness: Pardon?

Mr. Bakaly: Under a union contract with the Daily Breeze?

The Witness: I don't know if they have a contract or not.

Mr. Bakaly: That was the question.

Trial Examiner: Well, I don't think—That can be struck because it doesn't appear at least as of yet that your personal knowledge of it is based on anything more than a general understanding. Am I right?

The Witness: That's all.

Trial Examiner: That's all right. [143]

Q. (By Trial Examiner): In the plant where you work, do any of the people that belong to the Mailers Union work outside of the plant?

A. Oh, I couldn't—I couldn't state.

Q. You just don't know?

A. I don't know that.

Trial Examiner: All right. Well, I'm aware of the fact that there has been some preliminary testimony in the record that young Mr. Clark gave suggesting to me, at least, that these people that did the outside distributing work on occasion work inside the plant, too.

I think the record arguably could support that conclusion. It may not be correct.

So I suggest, Mr. Mark, that if there is a qualified union representative here that is familiar with local 9's

(Testimony of Bernard Clark.)

composition of its members, that that might be the best way to develop it.

Mr. Bakaly: I don't see any reason to fool around. We have a man here who is an officer of the local.

Mr. Mark: All right.

Trial Examiner: All right, Mr. Clark.

No more questions now of Mr. Clark?

Mr. Bakaly: No.

Mr. Mark: None here.

Trial Examiner: All right, thank you. [144]

(Witness excused.)

Mr. Mark: The General Counsel would like to call Mr. Leathem.

FRED MALACHY LEATHEM

a witness called by and on behalf of the General Counsel having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mark): Mr. Leathem, would you state your full name, please?

A. Fred Malachy Leathem, M-a-l-a-c-h-y L-e-a-t-h-e-m.

Q. Mr. Leathem, what is your occupation?

A. I am a mailer.

Q. Are you a member of Local 9 of the Los Angeles Mailers Union, I. T. U.?

A. Yes.

Q. Do you hold any position with that Local Mailers Union?

(Testimony of Fred Malachy Leathem.)

A. Yes. I'm chairman of the organization committee and also member of the scale committee.

Q. Of the scale committee?

A. Of the scale committee.

Q. In the course of discharging your duties as an official of the union, do you execute contracts or, let's say, negotiate contracts? A. Yes.

Q. —with employers regarding mail room personnel? [145] A. Yes, sir.

Q. Do you have any contracts in effect with any publishing companies in the Los Angeles area?

A. Yes, sir.

Q. Do you have any such contracts in effect with any publishing companies in the Redondo Beach area?

A. We have a contract with the Starbuck and the South Bay Mailing Company.

Mr. Bakaly: That is a publisher, is it?

The Witness: No. That is a job shop mailer.

Also, the Long Beach Telegraph, which is close by; we have a contract with them.

Q. (By Mr. Mark): Does the jurisdiction of your union take in the geographical limitations of Redondo Beach, in that area?

A. Yes, it does.

Mr. Mark: May I have this marked as G. C. Exhibit No. 3 for identification?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 3 for identification.)

Q. (By Mr. Mark): What type of personnel come under the jurisdiction of your union?

(Testimony of Fred Malachy Leathem.)

A. Mailers.

Q. What type of work do they do? [146]

A. A mailer does all sorts of work in a newspaper plant between the time that the newspaper is printed and the time it is delivered to the dealers' trucks.

Q. I hand you General Counsel's Exhibit No. 3, which is a newspaper agreement between the Los Angeles Mailers Union No. 9 and the Hillbro Newspaper Printing Company.

Now, this is an expired agreement. It's dated effective September 1, 1957, to August 31, 1959.

I call particular attention to Section 17 of this agreement and ask you to read that, please.

Mr. Bakaly: To himself?

Trial Examiner: Yes, I assume so.

Mr. Mark: To himself.

The Witness: Oh, pardon me.

Q. (By Mr. Mark): In regard to this particular agreement, were you involved in any way in any negotiations of this agreement?

A. I was not involved in the negotiations of that particular agreement.

At the present time I am involved in the negotiation of the succeeding agreement to that and at the present time Mailers Union No. 9 is working under this contract with the publishers of the Southern California area within our jurisdiction.

Mr. Bakaly: I object to that; move to strike that. [147]

Whatever the jurisdiction between some other employer and the union is is not binding upon this response.

(Testimony of Fred Malachy Leathem.)

Trial Examiner: Well,—

Mr. Bakaly: He has testified to his opinion, which I suppose is competent for what it's worth, that they think there is work in their jurisdiction.

Jurisdiction is something that is determined by a contract between an employer and a union.

Trial Examiner: That's the trouble with me, Mr. Mark.

What any other employer and Local 9 did wouldn't necessarily, certainly by Federal statutes we are concerned with here, be controlling.

So what we are really speaking for, I think, is the probabilities that would stem from the past practice of the Mailers Union or which would perhaps be reflected within their own constitution as to what type of work—

Mr. Bakaly: Of course, that would only be their opinion—

Trial Examiner: That's correct.

Mr. Bakaly: —and not binding on the Respondent.

Trial Examiner: Well, I would regard it as appropriate evidence on the issues that we have here.

Do you have a copy of your constitution with you, Mr. Leathem?

The Witness: No, I'm sorry, I don't, sir. [148]

Mr. Mark: Is it possible for you to procure a copy of that, the constitution?

The Witness: Yes.

Trial Examiner: I think we should probably have that, because Respondent should certainly have an opportunity to read it, particularly in view of the ques-

(Testimony of Fred Malachy Leathem.)

tions that I'm going to address to Mr. Leathem, and so that when we meet again if we can have that as well as the insurance policy of Mr. Clark—

Mr. Mark: Well, in view of the fact that I don't personally have—I haven't taken a look at the constitution involved, I would like to take a look at it myself.

Trial Examiner: Certainly, you may.

But I think that possibly it can be no more a qualifier as to the testimony that Mr. Leathem is in a position to give, in my judgment, as being a participant in this type of union organization.

Now, if you have no questions immediately, I would like to put two or three questions to Mr. Leathem.

Mr. Mark: I would like—I had not anticipated at this time calling Mr. Leathem, and for this reason, I would like to take time to at least bring questions for my own self so we can speed these things up.

Trial Examiner: Mine are very simple, and I think in view of the chain of events, that it would not be inappropriate [149] for me to ask the questions at this time while he is here.

Examination

Q. (By the Trial Examiner): Having in mind your opinion with respect to the jurisdiction that it encompasses, the work, from the time the printed material leaves the press until its put on the dealer's truck, having in mind that you have already told us that, first, does your organization represent anyone else that does work other than that would be from the time the papers or printed material comes off the press until it goes on the truck? A. No.

(Testimony of Fred Malachy Leathem.)

Q. Do you represent—and by you I mean your local No. 9 of the Mailers Union—do you represent individuals who do work that is only partially within that definition of your jurisdiction that you have given? A. No.

Q. Do you represent any part-time employees that do nothing but that work? A. Yes.

Q. Assuming that—

Mr. Bakaly: I take it that part-time bit assumes that the part-time employees have a sufficient connection with the bargaining unit to be included within it for the purposes for a representation proceeding?

Trial Examiner: Well, I'm not sure exactly what—
[150]

Mr. Bakaly: I think that is—I think I know the problem that is troubling the Examiner here.

That's a relevant fact to it.

Trial Examiner: I'm not certain that I see the necessary relevance of it, but probably it's the last thing that I'll go into and then you can go into it, Mr. Bakaly.

Q. (By the Trial Examiner): Have you in the past been aware of any position taken by your union with respect to any individuals who did part-time work which we would call Mailer's work and part-time work which would not be mailer's work for the same employer? A. No.

Q. You have not been confronted with that situation? A. No.

Q. I take it it's an all or nothing proposition?

A. Yes, it is.

(Testimony of Fred Malachy Leatham.)

We, if I may say so, I would perhaps by elaborating a little bit, I could clarify the situation.

Trial Examiner: I'll be glad to listen.

The Witness: Well, we have contracts with numerous small newspapers similar to the Breeze, for example, the Huntington Park Signal, the Arcadia Tribune, the Garden Grove Daily News, and in many instances we have signed contracts where the person working for these newspapers may work one or perhaps two days per week in the mail room. [151]

Perhaps they do not have a seven-day publication.

Some of them have two-day publications. However, they are employed exclusively on mailing room work. By that I mean, again, they handle all the necessary mailing work from the time the publication leaves the press until it is delivered to the tailgate of the truck.

Q. (By the Trial Examiner): Now, so that I'll be clear, these people that you have used as examples only work two days a week?

A. That's correct.

Q. They don't work in some other department of the publication during any other time? A. No.

Q. So you don't have that situation that you have been exposed to? A. No.

Trial Examiner: Well, I think that it would be appropriate that the respondent have an opportunity to examine the constitution of the International and the Local when we resume. Could you make that available, Mr. Leatham?

The Witness: Yes.

(Testimony of Fred Malachy Leatham.)

Trial Examiner: I have no more questions right now.

Mr. Bakaly: Will Mr. Leatham be available when we resume?

The Witness: Yes, I will be available.

Mr. Bakaly: Maybe it would save some time by asking a foundation question or two now and perhaps I might reserve my [152] examination until when he returns again.

There is no point in hitting him twice, but first I want to find out.

- Cross-Examination

Q. (By Mr. Bakaly): Have you made any statements to the National Labor Relations Board concerning this David Clark charge? A. No.

Q. Any written statements of any kind?

A. No.

Mr. Bakaly: I think I will reserve on it, if I may, until he comes back, until I can take a look at the constitution.

Trial Examiner: Yes.

Mr. Bakaly: I have a problem here. I know we want to quit at close to 4:00 o'clock.

I would like to, if this is all the evidence that you have now, I would like to, before we adjourn, to put on, out of order, a short witness who then may be permanently excused.

He is one of the district managers at the Breeze, and his presence here and Mr. Collins' presence here both disrupt somewhat the operations of the paper.

(Testimony of Fred Malachy Leathem.)

As long as we are going to have another day, I would like to get him out of the way, if we could?

Trial Examiner: I won't ask the General Counsel to formalize it, but maybe he has, in effect, rested, in any [153] event.

Maybe it may not be out of order so we will leave that question open until we resume.

Mr. Mark: Why don't we leave that question until we resume?

Trial Examiner: Yes. Thank you, Mr. Leatham.

(Witness excused.)

Mr. Bakaly: I will call Mr. Gagnon.

ERNEST LIONEL GAGNON

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Mr. Bakaly: I would like to indicate that Mr. Gagnon is being called out of order on my case.

He would normally follow Mr. Collins.

Trial Examiner: All right, fine.

Direct Examination

Q. (By Mr. Bakaly): What is your name?

A. Ernest L. Gagnon, G-a-g-n-o-n.

Q. What is your occupation, Mr. Gagnon, and by whom are you employed?

A. My occupation is district manager and I'm employed by the South Bay Daily Breeze.

Q. When were you first employed by the South Bay Daily Breeze?

(Testimony of Ernest Lionel Gagnon.)

A. About the first week of May in 1959.

Q. Have you always been a district manager? [154]

A. Yes.

Q. Were you employed as a district manager?

A. Yes.

Q. Do you know Dave Clark?

A. Yes, I do.

Q. How long have you known Dave Clark?

A. Since I've worked for the Breeze.

Q. What is the character of your relationship with David Clark?

A. Well, we work together when the press starts.

He is the flyboy, when the press starts, why I'm, oh—I won't call it a foreman, but I mean just to see that everything is going out, pick up all the supplies and so forth and make sure that everything is running smoothly.

Q. You don't have the power to hire or fire?

A. No, I don't, no.

Q. Or to effectively recommend hire or fire, do you?

A. That I don't know. I don't know.

It all depends—

Q. It has never arisen? A. No.

Q. Did David Clark prior to December 21, 1959, own a pickup truck?

A. Yes, he did.

Q. Will you tell us whether or not he on occasions prior to [155] that date helped out the district managers by using his pickup truck?

A. He is very helpful on that.

(Testimony of Ernest Lionel Gagnon.)

We get in a jam or the late press run, and to facilitate to get all the papers out to the carriers as soon as possible, why he would drop some of them off himself and do that wherever it was necessary.

Q. Were you present at a conversation on December 19, 1959, between David Clark, Harold Collins, and yourself? A. Yes, I was.

Q. Was anyone else present besides the three of you? A. No.

Q. Where did the conversation take place?

A. Across the street at the Spanish Inn.

Q. What was said by Mr. Collins and what was said by Mr. Clark?

A. Well, Mr. Collins offered Dave the job as a trainee and explained the job to him, explained the rate of pay, how he had arrived at the rate of pay, which was—well—and explained the duties, what he would be doing, what he had done previously to be able to go into the training program when he had done the flyboy job and how it helped out the district managers on different occasions, you know, in dropping bundles and taking care of everything; that he would be the really best man to come in as a trainee and get somebody else for the flyboy, so [156] he would learn also.

Q. Would you tell us whether or not Dave Clark said that he couldn't take the job because the car insurance would be too expensive?

A. No. He said he wanted to talk to his father, talk it over with his father.

Q. Would you tell us whether or not Mr. Collins

(Testimony of Ernest Lionel Gagnon.)

stated that if he didn't take the job he would—the job as trainee, they would have to bring in somebody else to be flyboy?

A. I would have to stop and think.

I'm quite sure, but I am not positive.

I don't really know for sure just which way it went.

It's hard to try to remember everything.

Q. Do you recall whether or not Dave Clark stated on this occasion that he wanted to remain as a flyboy?

A. No. I don't remember, no.

Q. You don't remember? A. No.

Q. Now, was there a conversation between you and Dave Clark on December 21, 1959?

A. Yes.

Q. Who was present?

A. There was Collins and Dave Clark and myself.

Q. Where did this conversation take place?

A. In Mr. Collins' office. [157]

Q. What was said by Mr. Collins and what was said by Mr. Clark and yourself?

A. Again, Mr. Collins explained the job as a trainee and I think—I thought it was a darn good deal myself, but it has nothing to do with it, but anyway—

Trial Examiner: You are right.

The Witness: —I thought so. It was a real good deal for him.

Well, anyway, Howard and Dave were talking, mainly Howard, trying to explain the job over again, actually the help they would get.

One thing I remember is that Dave was studying psychology or business psychology, something like that,

(Testimony of Ernest Lionel Gagnon.)

in that field, and I felt that with the training that he would be getting, the contacts he would be making—

Mr. Mark: I would like to interrupt here. I'm not sure whether he is repeating the conversation, which is what he was asked for, or whether he is giving his interpretation of what Mr. Collins' actions were at this time.

Q. (By Mr. Bakaly): Did Mr. Collins state this, or are these your feelings?

Trial Examiner: Who said what, not what you thought.

The Witness: Okay.

Q. (By Mr. Bakaly): We want what was said.

A. Well, let's go back to saying that he explained the training [158] program again to Dave and, again, how he arrived at the hours and so forth.

My own feelings, I think, would come in as to helping out—

Mr. Bakaly: Not unless you've made a statement—

The Witness: Yes.

Mr. Bakaly: —to that effect.

The Witness: I don't remember. I really don't.

The main thing—

Q. (By Mr. Bakaly): What did Dave say, if anything?

A. Dave said that he couldn't take the job, and then Dave also wanted to know if he should stay to help train the new flyboy, and Howard didn't feel that he would have to, and we—

Q. Dave Clark offered to say on and train the new flyboy? A. Yes, he did, but—

(Testimony of Ernest Lionel Gagnon.)

Q. Tell us what, if anything, was said about Dave's getting employment in Los Angeles?

A. Well, just from hearing the way he was talking, he was going to work—

Mr. Mark: I will object to that.

Trial Examiner: Yes.

The Witness: I was gathering that from the way he was talking.

Q. (By Mr. Bakaly): Try the best you can to tell us what was said.

Trial Examiner: It doesn't have to be exact, but repeat it. [159]

Q. (By Mr. Bakaly): Tell us what in effect was said.

Trial Examiner: You understand that right now we are on the subject of what if anything Dave Clark said about employment in Los Angeles on this morning, Monday morning, when you were in Mr. Collins' office?

The Witness: Yes.

Trial Examiner: Now, what do you recall of what was said by Dave Clark on this subject?

The Witness: There was, as far as I can remember, I don't think he said anything definite that he had a job, but I can only just—again, I'll have to say it this way: Just the way he was talking, that he was all set, he was going to work.

That's again—

Mr. Mark: I am going to move to strike that.

Trial Examiner: It may be struck.

Mr. Bakaly: Well,—

Trial Examiner: You are giving us your interpreta-

(Testimony of Ernest Lionel Gagnon.)

tion of it and which, perhaps, makes sense, except we are—we have to try to do a little better than that here, if possible.

The Witness: All right.

Trial Examiner: What we are looking for, if there was anything said by Dave Clark on that subject of getting work in Los Angeles, what do you remember about it?

The Witness: If I remember, he was looking for—he wanted more—[160]

Trial Examiner: This is what Dave Clark was saying to—

The Witness: Yes.

Trial Examiner: Tell us what he was telling you and Mr. Collins or speaking, in any event, on that occasion without that subject of getting work in Los Angeles.

The Witness: Doggone it. I can't quote.

I mean, it's just something that—

Trial Examiner: Maybe you misunderstand.

We are not asking that you quote or that you repeat word for word, but that if you do have some recollection of him making some statement or comment about getting work in Los Angeles, we want your best recollection of what he said on that subject.

Do you understand?

The Witness: Yes. That's what I am trying to come up with.

But like I said, from what I remember—

Trial Examiner: First of all, do you remember him saying something about the subject?

(Testimony of Ernest Lionel Gagnon.)

The Witness: Yes. He did say—

Trial Examiner: All right, all right. Now, so you remember him saying something about possibly getting work in Los Angeles?

The Witness: Yes.

Trial Examiner: Now, tell us as closely as you can what he said. [161]

The Witness: That he would be working just a couple of nights a week and I believe he was making \$24.00 a night, which would give him more time for his studies, it's words like that; anyways, it's in that—

Trial Examiner: In substance what Dave Clark said on that morning?

The Witness: Yes.

Trial Examiner: All right.

Q. (By Mr. Bakaly): I think inadvertently the Examiner put in a word when he said about possibly getting the work in Los Angeles, and if I might get a chance to lead the witness here a little bit.

Did you understand Dave Clark to say that he either had or was making arrangements to obtain such employment in Los Angeles?

Do you understand that?

A. Yes. From what I can remember or—of the conversation or the impression that it left on me on the conversation, is that he was set, he was ready to go to work.

Mr. Mark: I'm going to move to strike that.

The Witness: I can't say it in words.

Mr. Bakaly: Just a minute. I think that is proper, Mr. Examiner. This witness has a little difficulty here,

(Testimony of Ernest Lionel Gagnon.)

I think, in understanding exactly what we are saying, and he is characterizing both what Clark said, what Collins said and the boy's actions, so I think it's proper testimony.

Trial Examiner: Well, the difficulty with it is that, as we all know, we can get a variety of impressions from the same comment, and that's why, as a rule, a witness doesn't testify to his impressions.

Now, it may be just a question of semantics, which it probably is.

Mr. Bakaly: I think it is.

Trial Examiner: But I think that in the form that answer was given, I feel constrained now to grant the motion to strike that. [163]

Q. (By Mr. Bakaly): Did Clark say in words or effect that he could work in—

A. Yes.

Q. —Los Angeles?

A. In Los Angeles, yes.

Q. Did he say in words or effect that he had been making an effort previously to obtain work in Los Angeles?

Mr. Mark: Objection. That is leading him.

Trial Examiner: Well, it is leading him.

Mr. Bakaly: There is no question about that.

Trial Examiner: We have got to a point now where I think it's properly indicated to have such a question, at least in my judgment, which may be erroneous, so the objection is overruled.

Mr. Bakaly: Could you understand the question?

The Witness: Would you repeat it?

Mr. Bakaly: Read it, please, Mr. Reporter?

(Record read.)

(Testimony of Ernest Lionel Gagnon.)

The Witness: No. I don't think so.

Q. (By Mr. Bakaly): Did he say in words or in effect—I believe you testified to this—you said he could get work in Los Angeles? A. Yes.

Q. Did he say that he—In words or effect, tell us whether or not he said that he wanted to remain on as a fly boy? [164]

A. No. That was never brought up. Like I said before, he was just wanting to know if the—if he should stay on to train the other fly boy, but as for him to stay, no, he never said anything about it.

Q. Do you get a mileage allowance as a district manager? A. Yes, I do.

Q. How much allowance do you get per week and how many miles do you travel for the company per week?

A. Well, I get \$15.00 a week mileage allowance, and my district is eight miles a day, about eight miles a day; and then I would be dropping off special papers, going back, you know, to—maybe somebody didn't get one paper or work like that.

Q. For how many miles approximately is that?

A. That is for 48 miles per week.

Q. You get \$15.00 allowance for that?

A. Yes.

Q. Does this adequately compensate you for the expenses, considering depreciation, cost of insurance, if any, et cetera?

A. It certainly does; more than that.

Q. Have you in your discussions with other district managers ever heard any of them complain about

(Testimony of Ernest Lionel Gagnon.)

the size of the mileage allowance that they were getting?

A. No. They are all making real well on it. They are not hurting a bit. [165]

Mr. Bakaly: May I have just a moment, please.

May I have this marked as Respondent's next in order for identification.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 3 for identification.)

Q. (By Mr. Bakaly): Mr. Gagnon, I show you what has been marked as Respondent's Exhibit No. 3 and ask you if this is the statement which was signed by you on or about the fifth day of February, 1960?

A. Yes, it is.

Q. I would like to direct your attention to—

Mr. Mark: Excuse me. I would like to just object here, not to hold you up. I would just like to know whether or not you are attempting to refresh the witness' recollection, because I'm not sure if we have exhausted that or what—

Mr. Bakaly: I am going back to the conversation on the 21st and I think we have had difficulty and we exhausted this, and now I want to refresh the witness' recollection as to what he said on the fifth of February about this conversation on the 21st.

Trial Examiner: All right.

Q. (By Mr. Bakaly): I would like you to read to yourself the paragraph here beginning "On . . ."

A. All right.

Q. Now, I ask you—[166]

(Testimony of Ernest Lionel Gagnon.)

Mr. Mark: May I take a look at that, please?

Mr. Bakaly: Surely.

Q. (By Mr. Bakaly): I want to ask you whether or not your recollection has now been refreshed as to what Dave Clark said about a job which he had in Los Angeles?

A. Yes. He had something else in mind at that time, so—

Q. Do you recall him saying the words that he had something else in mind? A. Yes.

Mr. Bakaly: No further questions.

Cross-Examination

Q. (By Mr. Mark): Mr. Gagnon, you say you were hired back in May of 1959?

A. That's right.

Q. Did you take any training in the course of your job or position as district manager in the mailroom at all?

A. No. Mr. Daines, D-a-i-n-e-s, really is the one that trained me while I was working. He helped me out all he could.

Q. Did you undergo training in the fly boy job or the mailroom? A. He taught me that, yes.

Q. Mr. Gagnon, were you present all through the conversation on Monday, December 21st, between—

A. Yes. [167]

Q. Prior to this, you were not present at the time that Mr. Clark testified that you were called into the office after Mr. Clark and Mr. Collins had been talking for a while, isn't that correct?

A. No, it isn't, because I'm the one who went down

(Testimony of Ernest Lionel Gagnon.)

to the mailroom to get Dave, and we walked in together.

Q. Did you at any time leave the office?

A. No, I didn't.

Q. How large is the office?

A. Oh, twelve by twelve.

Q. Did you stray from the immediate area of conversation at any time? A. No.

Q. Were you listening to the conversation throughout the entire period? A. I feel I was, yes.

Q. And after Mr. Collins had asked Dave whether he wanted the training position, what did Dave say?

A. Well, that he did have something else in mind and that he was—wanted to know then if he should stay and train the new fly boy.

Q. Isn't it a fact that Mr. Collins asked Dave whether he wanted the training position and Dave replied that he did not, and that thereafter Dave asked Mr. Collins whether he wanted him to stick around?
[168]

Mr. Bakaly: I think that is about two questions; there may be three, Mr. Examiner; compound; objection.

Trial Examiner: Break it down, please.

Mr. Mark: All right.

Q. (By Mr. Mark): Isn't it a fact that the conversation between Mr. Collins and Clark took this order:

First of all, Mr. Collins asked Dave whether he wanted the training position, is this correct?

A. Yes, I believe so.

(Testimony of Ernest Lionel Gagnon.)

Q. And then Dave replied that he did not?

A. That he had something else in mind, that he did not want the job.

Q. And that thereafter, Mr. Collins—or Dave asked Mr. Collins whether or not he wanted him to stick around?

A. Whether he should stay and train the new fly boy.

Q. Right. And Mr. Collins replied no?

A. That he didn't feel it would be necessary, that I would be down there to train him, because I knew what was to be expected of the fly boy.

Q. Isn't it a fact that at this time Mr. Collins asked Dave what he was going to do and that Dave, in reply to this, said, "Well, I might be able to get a job in Los Angeles"?

Mr. Bakaly: This is two questions, again, Mr. Examiner.

Mr. Mark: I don't think that is unintelligible.

Mr. Bakaly: He ought to break it down. He is asking him [169] two or three different things, whether it occurred after this or that, and then what was said.

Trial Examiner: I think in view of the preceding question, it can be answered yes or no.

The Witness: Would you state that again?

Mr. Bakaly: Would you read it again, please.

(Record read.)

The Witness: No, I don't think so, no.

I think that had been taken care of.

Trial Examiner: All right.

(Testimony of Ernest Lionel Gagnon.)

Q. (By Mr. Mark): Who were you hired by at the South Bay Daily Breeze?

A. Mr. Collins hired me.

Q. What had you been doing prior to that?

A. Machine designer, machine tool designer.

Q. Had you known Mr. Collins long before you came to work for the paper? A. About a year.

Q. Was it a personal relationship?

A. We were neighbors.

Q. Live next door to Mr. Collins? A. Yes.

Q. Mr. Collins hired you? A. Yes.

Q. Do you still live next door to Mr. Collins? [170]

A. Yes.

Q. Have you talked over this case with Mr. Collins?

A. There is not much to talk about. We have talked about it.

Q. Have you talked over your conversation on December 21st with Mr. Collins?

A. More than likely, yes.

Q. Has Mr. Collins told you his interpretation of that conversation?

A. I don't think so. It was just general talk, like anything else.

Mr. Mark: I have no further questions.

Mr. Bakaly: No.

Trial Examiner: All right. Thank you. You are excused.

(Witness excused.)

Mr. Bakaly: May he be permanently excused, Mr. Examiner?

Mr. Mark: I have no objection.

Trial Examiner: Yes. We will stand adjourned now until 10:00 o'clock Thursday morning.

(Whereupon, at 4:20 o'clock, p.m., Tuesday, March 15, 1960, the hearing in the above-entitled matter was adjourned to Thursday, March 17, 1960, at 10:00 o'clock a.m.) [171]

Trial Examiner Kennedy: We will be on the record.

Mr. Mark, have you rested the General Counsel's case?

Mr. Mark: No, I haven't, Mr. Trial Examiner.

To meet the Trial Examiner's request, I have obtained a copy of the jurisdiction involved in the Mailers Union No. 9 Constitution, and the representative of the Mailers Union has handed me the copy of the Constitution, on which the last revision was 1956, and the article we are interested in relating to jurisdiction, the current article dealing with that, is Article 5.

I would like to see whether we can get a stipulation and have this particular matter received.

At this time I should also like to withdraw General Counsel's Exhibit No. 3, which I believe was the contract between Mailers Union No. 9 and The Hillbro Publishing Company.

Mr. Bakaly: May I see that? That's the contract I want to see anyway.

Mr. Mark: Certainly.

Trial Examiner: As I recall, General Counsel's No. 3 was offered and not received; is that correct?

Mr. Mark: That is correct. I believe it was offered but not received.

Mr. Bakaly: It was just marked, wasn't it? [174]

Mr. Mark: It was just marked, that is correct.

Mr. Bakaly: I don't think we got around to—

You represent this is a copy of the contract, and I am going to check here.

Respondents object to the withdrawal of this document from identification and request that we be allowed to cross-examine the witness on the basis of the document. We have not had the right to cross-examine the witness who identified the document. I feel that since the contract would be of assistance in cross-examining, it should not be withdrawn.

Trial Examiner: The only thing that occurs to me is that—and this is only a mechanical consideration—General Counsel doesn't have to make it his exhibit merely because he has offered it.

If it is offered, it will have to be offered by the Respondents.

Mr. Bakaly: Very well. As long as we have access to the document, that is the main thing.

Trial Examiner: And I gather what Mr. Mark was getting at was to have the extract from the Constitution marked as Exhibit No. 3; is that right?

Mr. Mark: As General Counsel's next in order.

Mr. Bakaly: There's no objection to that.

Mr. Mark: I'd like the reporter to mark this copy of Article V, "Jurisdiction," which is a true copy of Article V, [175] the article dealing with jurisdiction in the Constitution and By-Laws, the general laws, of Mailers Union No. 9, the International Typographical Union of Los Angeles, California and vicinity, adopted April 14, 1914 and approved by the I. T. W., and revised in 1956.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 3, for identification.)

Mr. Mark: Now, I move to have General Counsel's Exhibit No. 3 received in evidence.

Mr. Bakaly: We will stipulate that if Mr. Leathem were asked the questions setting forth the foundation for the document, his answers would be substantially the same as the description given by General Counsel in identifying the document; and with that stipulation we have no objection to the document's receipt in evidence.

Trial Examiner: In effect, you are not necessarily agreeing with its relevancy, but you are not questioning the authenticity of it?

Mr. Bakaly: That's right. I don't know. I'm stipulating that he could lay the foundation if he were so asked.

Trial Examiner: You are not raising, at this time, an objection for the document's admissibility?

Mr. Bakaly: No.

Trial Examiner: All right. The document identified as [176] General Counsel's Exhibit 3 may be received in evidence.

(The document heretofore marked General Counsel's Exhibit No. 3, for identification, was received in evidence.)

Trial Examiner: May I see a copy, please?

Mr. Mark: I would like to have Mr. Leathem resume the stand, please.

FRED MALACHY LEATHEN

a witness, recalled by and on behalf of the General Counsel, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Redirect Examination

Q. (By Mr. Mark): Mr. Leathem, you were present in the courtroom the other day when Mr. Clark, David Clark, was testifying as to his duties with the South Bay Daily Breeze; were you not? A. Yes.

Q. You heard him describe those duties?

A. Yes.

Q. And you described your position with Mailers Union No. 9 as that of an organizer? A. Yes.

Q. Would you give us a definition of just exactly what you do as an organizer?

A. As an organizer I seek out newspapers and mailing publications where we do not have a contract, a union contract, and by contacting the people who work in these establishments [177] I endeavor to bring them into our union and negotiate the contract with them for the publishers or owners.

Q. I show you General Counsel's Exhibit No. 3, which is Article V of your Constitution dealing with jurisdiction.

Are you familiar with that particular document?

A. Yes.

Q. In discharging his duties as a fly boy, a mailing room clerk at South Bay Breeze, would David Clark fall within the jurisdiction of your union?

A. Yes.

(Testimony of Fred Malachy Leathem.)

Mr. Bakaly: Just a moment. I move that the answer be stricken for the purpose of an objection.

Mr. Examiner, for the purposes of an orderly record, we should have here a description of the duties of David Clark in the mail room.

Counsel can paraphrase as he recalls what he believes to have gone into the record—

Trial Examiner: Insofar as this witness now is concerned?

Mr. Bakaly: That's right. The witness was here yesterday, and maybe he heard all the duties, maybe he didn't.

I don't think there's a proper foundation laid for the question. That's my objection.

Mr. Mark: Mr. Trial Examiner, I did already ask the witness if he recalled the testimony, and he stated he does. [178]

Trial Examiner: I will overrule the objection.

You can answer that again, Mr. Leathem.

The Witness: Yes.

Trial Examiner: The answer is "Yes."

Q. (By Mr. Mark): You also recall, Mr. Clark, David Clark, stating that he was offered a trainee position? A. Yes.

Q. As a trainee, would he fall within the jurisdiction of your union? A. No.

Q. Were you the party within the union organization who signed David Clark up to membership with Local 9? A. Yes.

Q. Do you recall when this was?

A. Yes. This was on the 15th of December.

(Testimony of Fred Malachy Leathem.)

Q. And at the time that you registered David Clark as a member with the union, did you receive an initiation fee from him? A. Yes.

Q. Was it a full initiation fee?

A. It was \$10.00, which is a reduced initiation fee under amnesty.

Q. Would you explain what you mean by "amnesty"?

A. In certain cases for the purposes of organization, the International Typographical Union grants officers of local [179] unions the right to take non-members into membership of their organization under amnesty, the idea being that these people have not served a normal apprenticeship but are competent to perform certain phases of the mailing trade.

Q. At the time you signed up David Clark, did you promise him employment in any other establishment?

A. No.

Q. Was there any talk at all about working in another establishment? A. No.

Q. Was there talk at all about working in another establishment if David did not work at the South Bay Breeze?

A. I explained to David that if he were fired from the Breeze for no reason of his own that the Union would then endeavor to get him employment.

Q. I see. And did you tell him that at the time that you signed him up? A. Yes.

Q. This is on December 15th? A. Yes.

Mr. Mark: I have no further questions.

(Testimony of Fred Malachy Leathem.)

Cross-Examination

Q. (By Mr. Bakaly): Did you talk to David prior to December 15? A. Did I? [180]

Q. Yes, David Clark. A. No.

Q. Did you talk to his father?

A. I believe I had a conversation on the phone with his father.

Q. Were you here yesterday during the testimony of— A. Yes.

Q. —Mr. Clark? A. Yes.

Q. Do you work at the same place of business as Mr. Clark? A. No.

Q. You do not? A. No.

Q. Do you recall when this conversation was with Mr. Clark?

A. Well, I could explain it to you, how the conversation came about.

Q. I just want an answer to my question.

A. Exact date, no.

Q. You don't recall? A. No.

Q. Was it one week prior to December 15th?

A. Yes.

Q. Was it more than one week?

A. Within one week.

Q. Within one week? [181] A. Yes.

Q. So that your first conversation with Mr. Clark was on or about December 7th or 8th, 1959; would that be correct?

A. No. If you go back within one week, I would say it was between the 9th and the 15th, the 8th and

(Testimony of Fred Malachy Leathem.)

the 15th. I mean, I couldn't specify the day. We'll say the 9th. I couldn't say for sure.

Q. Did Mr. Clark tell you in his conversation that he wanted you to sign up his son to membership in the Mailers Union?

A. He told me he had spoken with Mr. Babior.

Q. Mr. Babior? A. Yes.

Q. Did he tell you he wanted to have you come over and talk with his son about joining the I.T.U. as a mailer room employee? A. Yes.

Q. Did he tell you the reason for that was the long hours his son was working at the South Bay Breeze? A. No.

Q. Did he tell you that the reason he was interested in your talking to his son was that his son was underpaid at the Daily Breeze? A. No.

Q. Did he tell you that the reason he wanted you to talk to his son was that his son wanted to get a job as a mailer [182] in Los Angeles? A. No.

Q. On the 15th you talked to David Clark and he joined the Mailers Union; is that correct?

A. Yes.

Q. But he didn't pay an initiation fee?

A. Yes, he did.

Q. Or he did pay an initiation fee; is that it?

A. Yes.

Q. So that the word "amnesty" in your Union does not mean the waiving of initiation fees?

A. It does mean—

Q. Just answer the question.

A. —the answer is yes and no.

(Testimony of Fred Malachy Leathem.)

Q. —then you can explain the answer.

A. All right. If a person is taken into our Union not under amnesty, the full initiation fee is approximately \$115.00.

If they are taken in under amnesty, they can be taken in at a reduced rate of not less than \$10.00.

Q. What was the fee paid by Clark?

A. \$10.00.

Q. And then he is entitled to full membership in the Mailers Union? A. Yes.

Q. Is there an apprentice program in the Mailers Union—[183] A. Yes.

Q. —in the Journeyman's Classification in the Mailers Union? A. Yes.

Q. Did Clark come into that Union as a Journeyman? A. Yes.

Q. So that as far as you were concerned, on December 15th, 1959, David Clark was a Journeyman Mailer; is that right? A. Yes.

Q. During the period of time from December 15th, 1959, until December 22nd, 1959, have you contacted anyone at the Daily Breeze to request recognition as the collective bargaining representative of Mailer employees? A. No.

Q. Has anyone connected with the Mailers Union, Local 9, to your knowledge, contacted the Daily Breeze during the period from December 15th to December 22nd? A. No.

Q. Has anyone connected with the organization of the Mailers Union at any time, to your knowledge, contacted the Daily Breeze and requested recognition as

(Testimony of Fred Malachy Leathem.)

the collective bargaining representative of mailer employees? A. No.

Q. When I say "contacted," you understand me to mean in any manner by either phone or orally? [184]

A. Yes.

Q. Any requests, either written or oral?

A. Yes.

Mr. Bakaly: I think it might help the reporter if you waited until I finished talking before you answered, so there wouldn't be these interruptions.

Q. (By Mr. Bakaly): You had a conversation with David Clark on December 15th; is that correct?

A. Yes.

Q. At this conversation you asked him certain questions about the employees of the Daily Breeze; is that correct? A. Yes.

Q. Have you inquired of Mr. Clark, prior to that time, about the number of employees at the Daily Breeze or any questions concerning the employees of the Daily Breeze other than David Clark?

Mr. Mark: I am going to object to that. I think it's immaterial and irrelevant.

Trial Examiner: Overruled.

That question referred to Mr. Clark, Sr., if I understand you correctly.

Mr. Bakaly: That's right, prior to the 15th.

Trial Examiner: Good. Do you understand the question?

The Witness: I understand it, yes.

No, not to my recollection. [185]

Mr. Bakaly: All right.

(Testimony of Fred Malachy Leathem.)

Q. (By Mr. Bakaly): Your first conversation with anyone concerning the employees at the Daily Breeze occurred on December 15th in a conversation with David Clark?

A. Correct.

Q. Who else was present?

A. His father and his mother.

Q. Anyone else?

A. No.

Q. All right. Now, at that conversation did you ask the number of mailers who were employed at the Daily Breeze?

A. Yes.

Q. And what reply did David Clark give you?

A. That he was the only mailer at the Daily Breeze.

Q. The only mailer employed by the Daily Breeze.

A. Yes.

Q. Did he tell you his duties?

A. Yes. He told me that—yes.

Q. What did he say in that regard?

A. He said that he flew the escalator—I believe you would say “flew”. He was a flyboy. I suppose the past tense is “flew”.

Mr. Bakaly: You ought to know.

Q. (By Mr. Bakaly): What else did he say?

A. He said that he did the galley work. [186]

Q. Galley work? In what respect?

A. He handled part of the galleys.

Q. For what?

A. For the addressing of the papers.

(Testimony of Fred Malachy Leathem.)

Q. What else did he say he did?

A. Those were the two specific things he mentioned. And he said that he rope tied certain bundles, and various other duties in the mailroom.

Q. Various other duties inside the mailroom?

A. Yes.

Q. Did he tell you that he drove a truck on occasions for the company?

A. No. That wasn't mentioned.

Q. You're familiar with the National Labor Relations Act, are you not, Mr. Leathem, as organizer for the Mailers Union?

A. Yes, sir.

Q. You're familiar, are you not, with the fact that a bargaining unit must consist of more than one employee?

A. No, I wasn't.

Q. Isn't that correct?

A. I was not aware of that fact.

Q. How long have you been an organizer with the Mailers Union, Mr. Leathem?

A. Approximately two years.

Q. And in that length of time you mean to tell me you [187] thought you could have a one man collective bargaining unit?

A. Yes. I have had them before.

Q. You have had a one man collective bargaining unit?

A. Yes.

Q. Under a Board conducted election?

A. No. We have never had a Board conducted election in the I. T. U.

(Testimony of Fred Malachy Leathem.)

Q. That's something that occurred prior to November 13, 1959?

A. That's correct.

Q. Subsequent to November 13th, 1959, you may very well have Board elections; is that correct?

A. That is correct.

Q. The policy of the Union now is to avail itself of the services of the National Labor Relations Board; is that correct?

Mr. Mark: I am going to object to that question. I don't see the relevancy—

Mr. Bakaly: The question is certainly related to this matter of a one man unit, Mr. Examiner, and I think it is material here. If there was only a one man unit, there could be no union activity.

Trial Examiner: Isn't it a question as to whether we have a concerted activity. The proposition of the bargaining unit, per se, is not, as I see it, determinative. It is [188] whether David Clark engaged, or participated, in concerted activity.

Mr. Bakaly: How could he participate in concerted, activity when he was the only employee?

Trial Examiner: That is the question, and that's something I'd like to ask Counsel to enlighten me on. I would like to be enlightened on their views with respect to the theory that they hold in connection with that problem. There are things that suggest themselves to me as to how it is possible here. I don't think the representation question, as I see it, is determinative.

I think this will come under Sections (7) and (8)

(Testimony of Fred Malachy Leathem.)

of the Act, and whether this is an activity that fits in those rather than whether or not it is possible to have an election is, I think, important.

But that's only my tentative view. You can quite well persuade me otherwise.

Mr. Bakaly: I guess there is an objection pending.

Trial Examiner: There was an answer to the question.

If Counsel starts to speak, you might pause just a moment, Mr. Leathem.

As I recall, the last question was with respect to the policies of Mr. Leathem's organization in utilizing the services of the National Labor Relations Board, and I don't see any relevancy in that particular question. [189]

If there is an answer on the record, it may be stricken. The objection is sustained.

Q. (By Mr. Bakaly): Did you ask Mr. Clark, David Clark, during this conversation on the 15th, who worked in the mailroom?

A. Yes.

Q. And what did he reply?

A. He said he was the only mailer, and that there were two teen-aged boys who worked on Saturday for twelve or thirteen hours, or something like that.

Q. What else did he say?

A. That was—in that respect, that was all.

Q. That's all he told you about who worked in the mailroom? A. Yes.

Q. He did not tell you that there were seven full time mailers employed there? A. No.

(Testimony of Fred Malachy Leathem.)

Q. And he did not tell you that there seven part time mailers? A. No.

Q. And he told you he was a full time mailer; is that right? A. Yes.

Q. Did he tell you the names of the two teen-age boys? A. No.

Q. Did you ask him for names? [190]

A. No.

Q. —or addresses?

A. No.

Q. Did he tell you that Mr. Dennis Daines worked in the mailroom? A. No.

Q. He did not tell you that there were seven people employed by the Breeze who worked in the mailroom part time and were District Managers part time?

A. (No response)

Q. Did he tell you that? A. No.

Q. What else did you ask about the employees of the Daily Breeze during this conversation?

A. Well, I asked if there were any other employees there and he explained that there were two teen-aged kids who worked at similar jobs to his on Saturday, and, also, that if someone wanted papers out of the mailroom, they would just walk in and get them. They didn't work there, but they would walk in and get them, but he was the only employee directly doing the mailing work—mailing work in the Redondo press.

Q. Did he tell you there were some people there who tied papers? A. No.

Q. Do you know that to be a fact? [191]

A. No. [192]

(Testimony of Fred Malachy Leathem.)

Q. Isn't it true that the district managers at the Daily Breeze tie papers?

A. If you say so, and you know it is correct, I will accept what you say.

Q. But you don't know it of your own knowledge?

A. No, I don't.

Q. Now, you said something yesterday that interests me. I don't purport to remember overnight exactly what you said, but it seems to me that you said the Mailers Union does not desire to represent people who are full-time employees, but only to represent mailers who work part of the time.

Now, is that about what you said yesterday, substantially?

Mr. Mark: If there was any kind of doubt in the witness' mind, we might go back in the record.

Trial Examiner: We can, yes.

Mr. Bakaly: It's not that important.

Trial Examiner: We can, however, I think, as I remember it, that was in response to a question of mine—

Mr. Bakalay: That's right.

Trial Examiner: And also, so that your memory will not be diminished on the record so severely, actually, it was two days ago, Mr. Bakaly.

Mr. Bakaly: That's right. Thank you.

Trial Examiner: I will state my recollection of the answer and then I will ask Mr. Leathem if it is substantially [193] correct. Then, Mr. Bakaly, you take the subject up again.

Your testimony as I recall it, was that you did not

(Testimony of Fred Malachy Leathem.)

represent anyone as a mailer unless they did mailing work exclusively and didn't do any work other than what has been described here in a general way in this Exhibit as the duties of a mailer; is that correct, Mr. Leathem?

The Witness: Well, at the time the question was made to me, I think you were getting at whether there were any people that we represented that did both mailing room work and other work outside the mailing room.

Trial Examiner: I think that is the way the question was put, yes.

The Witness: And I said, "No. We had no examples of such people."

Trial Examiner: I think that is what the record states.

Mr. Bakaly: That is basically my recollection. I don't think we are apart on that.

Q. (By Mr. Bakaly): So I take it that if a person did mail room work 95% of the time, work within the scope of Article 5 here, in General Counsel's Exhibit No. 3, and did that work 95% of the time and work of another character 5% of the time, you would not organize that man?

A. We would organize that man.

Q. You would?

A. We would organize that man, yes. [194]

Q. All right. Suppose a man did mail room work within your jurisdiction, within the terms of Article 5, 75% of the time and other work 25% of the time, you would organize that man, too, wouldn't you?

(Testimony of Fred Malachy Leathem.)

A. Probably.

Q. Probably. If a man did mailers work 50% of the time and some other kind of work for a newspaper 50% of the time, you probably would organize that man if you could, wouldn't you?

A. Well, there would be a lot of circumstances in such a case.

Q. All right. Let's assume that he does not do the work that is presently covered by any other union in the printing trade?

A. In that case we would organize.

Q. You bet your life you would.

Let's go down to 35% of the time. He did mail work 35% of the time and he did some other work 65% of the time, but that work he did was not within the claimed jurisdiction of any other union at that time. You would organize him, wouldn't you?

A. Well, sir. This is a purely hypothetical question.

Q. Well, Mr. Leathem, you're an expert in this. You should be able to answer a hypothetical question of that sort.

A. That is true, sir. But I have never met up with such a case and I therefore could not tell you what my recollection [195] would be if I met with that circumstance.

Q. Let's take a hypothetical case of a newspaper where the bundles and so forth are tied by individuals, carried out and loaded onto the trucks by the same individuals, and the trucks are driven away and the bundles dropped by the same individual, dropped to the carriers.

(Testimony of Fred Malachy Leathem.)

This employee is an employee of the newspaper and not an agent or an independent contractor, and he's not; under the jurisdiction of the Teamsters or the Newspaper Guild. In that situation, isn't it true that you would attempt to organize that man?

Mr. Mark: I'm going to object to that question unless there is some sort of showing that this situation, in fact, exists in the South Bay Press.

Trial Examiner: I think the record shows that.

Mr. Bakaly: I will lay that foundation, although it is my recollection that it has been laid already.

Trial Examiner: Mr. Leathem said that David Clark informed him that people would come in and tie their own bundles and carry them out.

Mr. Bakaly: I know that somebody has testified to that and that it is in the record. I'm sure of that, Mr. Examiner.

Mr. Mark: I'm afraid I don't recall that particular portion of the testimony.

Trial Examiner: If it's not in there, it's not in there, [196] and the hypothetical situation would not be probative evidence, at any rate; but we'll take it under the assumption that this testimony will be there.

Do you have in mind the problem posed to you by Mr. Bakaly, Mr. Leathem?

The Witness: Sir, this hypothetical question that has been related to me, and the newspaper, quite frankly, in my experience as an organizer for the Mailers Union Local No. 9, I have come in contact with such a situation, and I would find it quite impossible to give

(Testimony of Fred Malachy Leathem.)

Counsel a direct yes or no answer as to what I would do under those circumstances.

In the first place, it seems to me that it would be a rather peculiar position where papers would come off a press, a boy would fly those papers, tie them in a bundle, run them onto the dock, jump into the truck, and run and deliver these papers?

Mr. Bakaly: I think you misunderstand my question.

The Witness: Wasn't that what you described?

Mr. Bakaly: No. I described this individual as one who would tie the papers, carry them from the mail room out to the dock and put them on a truck, in other words load the truck, maybe making several trips back from the mail room, maybe tying the papers at different times that he was loading them on the truck, and then driving the truck away and dropping the bundle for the carriers. [197]

He has nothing to do with flying the press.

The Witness: I misunderstood you, sir.

If I may reconstruct your hypothetical employee, do you mean for me to assume that the papers are taken off the press; they are in the mail room in, say bundles of 50 and this person comes in, takes those bundles of 50, and places them on the truck?

Mr. Bakaly: And ties them.

The Witness: Ties them and places them on the truck.

My answer is, "No." We would not endeavor to organize these people.

Q. (By Mr. Bakaly): But you would organize a

(Testimony of Fred Malachy Leathem.)

person who did mailers' work approximately 35% of the time and the other work that he did 65% of the time was not within the then jurisdiction of any other labor union. You would organize that person, wouldn't you?

A. I don't think I made that statement, sir.

Q. I'm asking you now.

A. I repeat that I would first have to meet this situation before I made the decision.

Trial Examiner: If you don't mind, Mr. Bakaly, I'd like to ask Mr. Leathem: Have you ever organized or solicited for membership employees whose work fell outside, or a portion of whose work fell outside, of this description of the jurisdiction which is in Article 5 of General Counsel's Exhibit 3?

The Witness: No.

Trial Examiner: You never have?

The Witness: No. They have always been exclusively what we call "inside mail room employees."

Trial Examiner: They have always been inside mail room employees?

The Witness: That is correct.

A. (By Mr. Bakaly): Well, if you haven't met this situation I just described of an employee working 35% of the time doing mailing work and 65% of the time doing work not then claimed by another union, then you haven't ever had the situation of attempting to organize the hypothetical individual in my hypothetical question, have you? A. That is correct.

Q. You have never had that situation?

A. That is correct.

(Testimony of Fred Malachy Leathem.)

Q. So you don't know whether you would organize that individual or not, do you?

A. I believe that is what I said, sir.

Q. I believe your answer is that you would not.

A. I said—

Q. Go ahead. You may explain what you said.

A. I said that if an individual is your hypothetical case came into the mail room, got a bundle of newspapers, took them to a truck, dropped them on the route, I would not endeavor [199] to organize this person.

Now, if you would like to know what I would endeavor to do under such a circumstance, I would tell you—do you desire to know what I would do?

Q. Yes. I'd like to know what you would do.

A. Well, as you well understand, the part of the work which he did in the mail room would be under our jurisdiction, and when we would sign a contract with the employer or the publisher we would endeavor to include the jurisdiction of tying these bundles in our contract.

Trial Examiner: And loading them, too, I assume?

The Witness: And loading.

Q. (By Mr. Bakaly): And if this hypothetical person drove a truck, would you be interested in having him as a member of your union?

A. It could go either way. If 95% of his work was on the truck, he would probably continue on the truck, and therefore, I would have no further interest in the person.

(Testimony of Fred Malachy Leathem.)

Q. Well, suppose 65% of his time was on the truck and 35% of his time was spent in the mail room?

A. It is still probable he would go on the truck. We are only interested in the work that he is doing which falls within our jurisdiction. His work in the mail room would entitle him to membership in our union and we would certainly take him in, but he could not continue to drive the trucks. [200]

Q. He could not continue to drive trucks?

A. No. We are not interested in taking jurisdiction of the Guild or Pressmen or anything else. We are only interested in our own jurisdiction in the mail room.

Q. I'm not sure that I understand what you are saying exactly. Let's take my hypothetical man again. You say if he worked 35% of the time in the mail room, you would try to enter into a contract covering that 35% of his time; is that what you mean?

A. That is right.

Q. Well, would that contract specify that he would have to be, within 30 days after the signing of the contract, a member of the Mailers Union?

A. No. We do not operate a union shop or a closed shop in the I.T.U.

There's no such specification in any of our contracts.

Q. The I.T.U. does not operate a union shop?

A. That is correct.

Trial Examiner: I think that this is probably getting to a point where you wouldn't be accomplishing anything productive, Mr. Bakaly. I think the thing that wasn't answered specifically, which was suggested,

(Testimony of Fred Malachy Leathem.)

at least by Mr. Leathem, was that the work in the mail room, if he obtained a contract with the employer, would be done by people of your organization, if I understand it correctly; is that right? [201]

The Witness: That is correct.

Trial Examiner: And that would preclude the people who did that work from doing work that was not within the jurisdiction of your union; is that correct?

The Witness: That is right.

Mr. Bakaly: I'm not sure that is what he said. That's where I am confused. I don't think that's what the witness has testified. He's testified that—and I'm not contradicting you—but he has also testified to my hypothetical situation where a man is doing work only 35% of the time, work in the mail room, and he has said that he would not require those people to come into the union. He might require them to come into the union when they did that work under a different pay scale from what they did the other work.

Trial Examiner: I think Mr. Leathem will ultimately answer this, but I'm going to give you my understanding of what he said.

Mr. Leathem's organization would seek to have that work assigned to someone in their organization, and it doesn't necessarily have reference to an individual. If the individual didn't perform the work, that would be secondary; but it would be someone who would be a member of his organization that would do the work and if the man was driving a truck 65% of the time, as I understood, why, that man would not do any more inside work. He would no longer be interested in that man. [202]

(Testimony of Fred Malachy Leathem.)

Mr. Bakaly: But that might be one of the men who joined the Mailers Union and does full time mailer work after the contract has been consummated.

I think this is important to determine whether there's been any discrimination here.

Trial Examiner: I agree, and I appreciate that what you and I say is not evidence; but maybe it will point up, possibly, what should be developed. What Mr. Leathem's testimony means will be interpreted differently, and I think it should be cleared up.

Why don't you go ahead and—
Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Bakaly: The question that I propose may very well—and I don't know—go to the witness' credibility.

Trial Examiner: This has reference to a union or a closed shop, Mr. Bakaly?

Mr. Bakaly: Yes. This witness has testified that the I. T. U. does not operate a closed shop, or a union shop; and I assume he means that to be anywhere in the world, and I personally am aware of many cases in the reported opinions of the Board and of the Courts dealing with the closed shop provisions of the I. T. U. contract.

Trial Examiner: Well, again, even though it has been [203] written up in my law books, it's still a legal conclusion as far as this witness goes, and I don't think it is too important to the issues and even on the credibility aspect.

I'm sure that there are many people in his organiza-

(Testimony of Fred Malachy Leathem.)

tion who think, perhaps, that some decisions have been wrong, with respect to the determinations.

Mr. Bakaly: I'm sure that the I. T. U., from the man at the top down to the man at the bottom, thinks these decisions are wrong; but the question of fact still is, in my opinion, that they operate a closed shop. But that's neither here nor there.

Mr. Mark: Well, Mr. Trial Examiner, I object—

Trial Examiner: I'm going to sustain an objection to your intended question, if one isn't already made. And if one is being made, I assume that it is being made to that line of questioning.

Mr. Bakaly: Very well.

Q. (By Mr. Bakaly): Now, you also stated yesterday—excuse me, on Tuesday, Mr. Leathem—that your jurisdiction extends from the time the printed material comes off the press until it is delivered on the dealer's trucks?

A. That is correct. To the dealer's trucks, I believe I said.

Q. To the dealer's truck? A. That is right.
[204]

Q. Your jurisdiction does not extend on to the dealer's trucks?

A. No. He will tail-gate delivery.

Q. Tail-gate on the truck?

A. That's right. My Irish accent gives people problems.

Q. Would there be any difference if the truck was operated by an employee and not a dealer?

A. No.

(Testimony of Fred Malachy Leathem.)

Q. You stated in answer to a question by General Counsel here this morning, that as a trainee, David Clark would not be eligible for membership in your union; is that correct?

A. I said that we would not represent him.

Q. You would not represent him? A. No.

Q. And that's because he is a trainee?

A. That is because the work he would be doing in reference to the particular instance of what we are talking about, that he would not be *being* work within the jurisdiction of the Mailers Union.

Q. He could still be a member of the Mailers Union, however?

A. Oh, yes. But we wouldn't seek to represent him as a bargaining agent.

Q. And what work would that be?

A. To what do you have reference?

Q. District manager, trainee for a district manager.

[205]

A. We would not wish to represent him as a bargaining agent.

Q. You don't wish to represent district managers?

A. Correct.

Q. Even when they do mailers' work part of the time? A. Correct.

Q. But if they did mailers' work 50 per cent of the time, I think you said you would represent them then?

A. I think—when you got down to that point, I think I said I would have to meet the situation as it came about.

Q. But you probably would represent him—

(Testimony of Fred Malachy Leathem.)

Mr. Mark: I'm going to—

Q. (By Mr. Bakaly): —if 50 per cent of the work done by the district manager at the South Bay Daily Breeze—

Trial Examiner: I think we have been over this ground before.

Mr. Bakaly: Well, I'm not going any further with it.

Q. (By Mr. Bakaly): To go back to our hypothetical question, our hypothetical individual, the man who does mailer's work 35 per cent of the time, and you organized the mail room of a newspaper that has this hypothetical individual, is it true, is it not, that you would attempt to negotiate a contract that provided that all of the mailers' work would be done only by mailers? A. Correct.

Q. And you would attempt to obtain a contract which provided [206] that this hypothetical man could no longer do 35 per cent of the mailers' work, is that right? A. I didn't say that, sir.

Q. —or that 35 per cent of the work must be done by mailers? A. Correct.

Trial Examiner: —who did just mailing work; is that correct, Mr. Leathem?

The Witness: That is correct.

Trial Examiner: Doesn't that really cover the ground, Mr. Bakaly? It would be the position, in this hypothetical situation, that these people who did mailing work would no longer do other work. That is what it really boils down to, isn't it?

Mr. Bakaly: That's right.

(Testimony of Fred Malachy Leathem.)

Trial Examiner: I think the inference is just inexorable, and that this is what would be material.

Mr. Bakaly: I just have one more question or so along that line.

Q. (By Mr. Bakaly): As a practical matter, some of the people that have been doing both mailers' work and the non-mailers' work would then do only mailers' work? A. That could be, yes.

Q. —and be within your jurisdiction?

A. That could be. [207]

Mr. Bakaly: I'd like to ask the reporter as Respondent's next in order, an agreement between Local No. 9 of the I. T. U. and the Hillbro Newspaper Printing Company.

(Thereupon the document heretofore referred to was marked as Respondent's Exhibit No. 4 for identification.)

The Witness: Sir, if I may say so, at this time, this agreement has expired.

Trial Examiner: Excuse me, this is something your Counsel will probably take up.

We will take a short recess.

(Whereupon a short recess was taken.) [208]

Trial Examiner: On the record.

Mr. Bakaly?

Q. (By Mr. Bakaly): I show you what has been marked as respondent's No. 4, and ask you if this is an agreement that was in effect between your union and the Hillbro Newspaper Printing Company during the period, September 1, 1957, to August 31, 1959?

A. Yes.

(Testimony of Fred Malachy Leathem.)

Mr. Bakaly: I would like to offer this exhibit into evidence at this time, for the purposes of showing that the union does have a certain jurisdiction of people who might be considered similar to the district managers at the Daily Breeze, and for the purpose of impeaching this witness, his testimony, in the light of Section 17 of the contract, which I would like to offer but which I do not have with me and I have been unable to make extracts of it. I can have that done and submit that, however.

Trial Examiner: You are only interested in Section 17?

Mr. Bakaly: That is right.

Trial Examiner: I would suggest then that extracts be made of this available to the reporter at a later date.

Mr. Mark: Just a minute. If it is being offered for impeachment—

Trial Examiner: I think it is a question of foundation, to find out what, if anything, is Mr. Leathem's connection with the contract. [209]

Would you agree with that, Mr. Bakaly?

Mr. Bakaly: Well, I don't really think it makes any difference because this is an admission of the union as to what is in their jurisdiction, and merely by the fact that he has testified that he has entered into the contract which would certainly make him a party of it.

Trial Examiner: It might have some bearing. However, it might assume more significance if something else were developed, too.

Mr. Bakaly: I will ask the questions that the Examiner's remarks suggest.

(Testimony of Fred Malachy Leathem.)

Mr. Mark: May I see that contract, please?

Mr. Bakaly: Surely.

Q. (By Mr. Bakaly): Did you have anything to do with the negotiations of that contract?

A. No.

Q. Are you familiar with it? A. Yes.

Q. Does it correctly set forth the jurisdiction of your union, so far as you know?

A. (No response.)

Mr. Bakaly: No further questions—on the foundation.

Trial Examiner: Oh, I see. But are you offering the exhibit?

Mr. Bakaly: I am offering it in evidence. [210]

Trial Examiner: Do you have any objection, Mr. Mark?

Mr. Mark: I have no objection, except that it shows what the jurisdiction of the Mailers Union included so far as the agreement between the Mailers Union No. 9 and Hillbro Newspaper Printing Company is concerned, and the fact that it is not any longer in effect which, in effect, make it immaterial.

Trial Examiner: I think this is something that goes to the weight of the argument. It will be admitted.

(The document heretofore marked Respondent's Exhibit 4 for identification was received in evidence.)

Mr. Bakaly: I will have extracts made and submitted to the reporter as soon as possible.

Trial Examiner: All right.

Mr. Bakaly: I think that's all the questions I have.

(Testimony of Fred Malachy Leathem.)

Redirect Examination

Q. (By Mr. Mark): Mr. Leathem, are you familiar with the fact that there are other boys employed besides David at the South Bay Daily Breeze that do flyboy work?

Mr. Bakaly: Object to the question unless it is limited as to time. If it was after December the 21st, 1959, it would be irrelevant and immaterial to this proceeding.

Trial Examiner: I think that is correct, Mr. Mark.

Q. (By Mr. Mark): As of December 15th, 1959, do you know whether there were other flyboys in the operation of the Daily Breeze? [211]

A. Yes.

Q. Would these flyboys be eligible for inclusion in the unit in the Mailers Union? A. Yes.

Trial Examiner: Are we speaking from the union's jurisdictional standpoint, or from a Labor Board collective bargaining appropriate unit standpoint? When you're talking about "eligible," what do you mean?

Mr. Mark: I am talking about eligibility so far as Mr. Leathem's organizational efforts are concerned.

Trial Examiner: And you answered "Yes" to that?

The Witness: Yes.

Trial Examiner: All right.

Mr. Mark: I have no further questions.

Trial Examiner: Mr. Bakaly?

(Testimony of Fred Malachy Leathem.)

Recross-Examination

Q. (By Mr. Bakaly): And these boys that you have just referred to are the two teenage boys that Clark informed you of?

A. That is correct.

Q. Do you know how many hours a week they worked? A. No, sir.

Q. Do you know whether there was any turnover among these two boys, or the degree of turnover?

A. No, no. [212]

Trial Examiner: I think on your previous interrogation in-answer to your question, Mr. Bakaly, Mr. Leathem said he knew they worked on week ends, and he made no effort to contact them nor to get their names and addresses.

Mr. Bakaly: Well, he doesn't know whether boy "A" was on with boy "B", or with boy "E" or "G". He doesn't know whether the same individuals came each Saturday, or whether there was a turnover.

He doesn't know whether one boy was working a full shift on Saturday, or whether there were several boys filling part-time slots.

Q. (By Mr. Bakaly): Is that statement correct, Mr. Leathem?

A. That is correct.

Trial Examiner: Well, I think that you will find that as far as the record goes that will all be in there.

Mr. Bakaly: That's what I was trying to bring out. That's all I have.

Trial Examiner: Thank you, Mr. Leathem.

(Witness excused.)

Mr. Mark: Just one moment, Mr. Trial Examiner. We would like to recall David Clark to the stand.

Trial Examiner: Would you come up here, please, Mr. Clark?

DAVID CLARK

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified [213] further as follows:

Trial Examiner: You have been sworn previously, you understand and are still under oath, Mr. Clark?

The Witness: Yes.

Trial Examiner: And I think we are going to remember today to speak quite slowly.

Further Redirect Examination

Q. (By Mr. Mark): David, are there any other employees who worked in the mail room besides yourself during any other period for South Bay Daily Breeze?

A. Well, there was as far as my knowledge goes. There were the two teenage boys that were brought in, and then on Wednesday nights there was—I know there was Mr. Starbuck and this other gentleman. I don't know his name.

They were union mailers.

Q. Do you work in the mail room? A. Yes.

Q. What type of work do they do?

A. They mail out the advertisers, the 8,000 peninsula advertisers.

Q. That would be on Wednesday nights?

A. On Wednesday nights, yes.

(Testimony of David Clark.)

Q. And to the best of your knowledge are they union members of the Mailers Union, Local 9?

A. Yes. [214]

Mr. Mark: I have no other questions.

Mr. Bakaly: I don't have any cross-examination, but I would like to call this witness under 43(b).

Trial Examiner: While you're here, Mr. Clark, and you may have answered this already, but I'd like to ask you again if you will answer this question: When you were talking to Mr. Collins on this Saturday and Monday about this trainee job, did you advise Mr. Collins that you had agreed with a union representative that you would not do any other work except working in the mailroom?

The Witness: Did I tell him that?

Trial Examiner: Yes. Mr. Collins.

The Witness: No.

Trial Examiner: You don't recall telling him that?

The Witness: No.

Trial Examiner: All right, anything else?

* Mr. Mark: No.

Trial Examiner: General Counsel rests then?

Mr. Mark: General Counsel rests.

Trial Examiner: Mr. Bakaly?

Mr. Bakaly: Could I have just a few minutes to get down that last?

Trial Examiner: Certainly.

Mr. Bakaly: Respondent will call Mr. Jack Clark.

BERNARD CLARK, [215]

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Trial Examiner: May the record reflect that Bernard Jack Clark is the same Mr. Clark that has previously testified, and you understand that you are still under oath, having been sworn previously?

The Witness: Yes, sir.

Mr. Bakaly: Mr. Examiner, I believe there is sufficient foundation to indicate that this witness is hostile to the respondent, and I would like to request that I question him under 43 (b) so that I may ask him leading questions.

Mr. Mark: I am going to make an objection here, Mr. Trial Examiner, if the leading questions that are going to be brought up go to the matter of defense and not to any issues which were brought up in Mr. Clark's direct testimony already.

Mr. Bakaly: We have denied all your allegations, so that anything you have proved is a part of our defense, I am afraid.

Trial Examiner: I am going to avoid passing on this in advance, Mr. Bakaly.

My approach will be that if I think a question will produce what this witness has to testify to, I will not sustain an objection to it merely because it is leading; but I'm not going to adopt, necessarily, a characterization at this point that this witness is hostile to the respondents. I think that [216] if the question is intelligible to the witness and it is clear that he is not adapting the question and understanding it, why, as a

(Testimony of Bernard Clark.)

matter of expedition I would encourage him to get right at the heart of it.

Mr. Bakaly: I meant to characterize him as an unwilling or hostile witness only within the meaning of 43(b). I am not trying to say that he is personally hostile to us.

It is my understanding of 43 (b) that any witness who has testified affirmatively for the other side may be interrogated as an unwilling or hostile witness through leading questions.

This is different from calling a witness under 43 (b).

Trial Examiner: That may be true, but it is not my understanding, Mr. Bakaly, because I have encountered situations where the witness was fully objective no matter who called him, and the fact that he, at the time, was on one side or the other doesn't lead necessarily to the conclusion that his answers will be evasive or unsatisfactory.

Why don't we see how these questions go, and we can deal with them as the problem arises.

Direct Examination

Q. (By Mr. Bakaly): Mr. Clark, I want to ask you about your testimony of the other day. You stated that after the 21st of December you had talked with an insurance man about rates?

A. Yes, afterwards.

Q. Was that Mr. Peterson or was that somebody else? [217]

A. It was someone in his office there.

(Testimony of Bernard Clark.)

Q. Your conversation with Mr. Peterson occurred in June of 1959; is that right?

A. Or his representative. It was someone in his office there.

Q. Well, when you purchased the Farmers Insurance, that was in June of 1959?

A. Yes.

Q. And you purchased that from Mr. Peterson? I believe you testified to that yesterday.

A. Mr. Peterson, or his representative.

Q. Now, during the fall of 1959, and by fall I mean from September to November or December, you had several conversations with your son, David, about his desire to leave school; did you not?

Mr. Mark: I am going to object to that. I don't see where it is material or relevant.

Mr. Bakaly: Well, it is, I believe, Mr. Examiner, as I will show shortly.

Trial Examiner: I think it has been asked and answered already. It's been related, how David wanted to have more leisure time and he was trying to enlist Mr. Collins' aid to persuade his father that it would be all right for him to leave school.

Mr. Bakaly: I wasn't sure it had come out that way.

Q. (By Mr. Bakaly): Is that the case, Mr. Clark?
[218]

A. I mentioned it to Mr. Collins, that David wanted to quit school.

Q. And you talked with David about it?

A. And I told him, yes.

(Testimony of Bernard Clark.)

Q. David wanted a job where he could have shorter hours; isn't that true?

A. Yes, on Saturday.

Trial Examiner: Yes, on the week end. And I think the record is quite clear on that.

Q. (By Mr. Bakaly): There were jobs in Los Angeles where David could work shorter hours and make more money, to your knowledge, in November or December of 1959; were there not?

Mr. Mark: I will object to that. Again, I will object to it as being vague and indefinite. We don't know whether he is talking about mailer jobs or any kind of jobs.

There are loads of jobs which are advertised in the paper.

Mr. Bakaly: Well, I think the witness understood that I was talking about jobs that David could do.

The Witness: No, no, I don't.

Trial Examiner: Excuse me. I guess I am guilty too of breaking in; but for the reporter's sake, if we can speak one at a time I think it will be helpful.

Now, Mr. Mark objects to the question on the grounds that it is too remote. Do you have anything to say about this, Mr. Bakaly? [219]

Mr. Bakaly: I am talking about it in the context of what was developed previously and what the record reflects, that David actually has a job now working in Los Angeles where he makes as much or more money than he was making before, and in that light I think it is significant whether Mr. Clark, Sr. at that time knew these jobs were available in Los Angeles.

(Testimony of Bernard Clark.)

Trial Examiner: Absolutely. However—

The Witness: Yes. And the answer to that is “no.”

Trial Examiner: You didn't know they were available?

The Witness: No. I didn't.

Trial Examiner: Did you know that there was a potential availability of doing the kind of work that David is doing now in Los Angeles, back in October and November and December of 1959?

The Witness: Well, only that it would be related to the printing trade and when they have said about this working in Los Angeles—I mean, through my position I could have acquired work for him—but not as a mailer—but in work with a printing plant, and that's the only time I have ever said “yes” to a question if he could work in Los Angeles.

But I could never procure him any work as a mailer.

Mr. Bakaly: Nobody's asking you if you could procure him work as—excuse me, Mr. Examiner. You go ahead.

Trial Examiner: If I put it this way, Mr. Clark: Back in the fall and late fall, and in the period involved here in [220] 1959, were you aware of the fact that there was the work of the kind that David is now doing in Los Angeles that was being carried on in whatever publishing or printing house that he is working for? Did you know that there was such kind of work?

It is whether you knew it or not, not whether you could get him a job.

(Testimony of Bernard Clark.)

The Witness: It's a related field to what I do. I do know that that work was being carried on.

Trial Examiner: And at that time, if I understand you correctly, you did not know whether or not there were any specific openings for these jobs, but you knew there was a potential for David or anyone else to get this type of work in the printing or publishing field; would that be a fair statement?

The Witness: Well, I would presume so. He could—although I never really give it any thought, for him to work as a mailer in Los Angeles.

Trial Examiner: All right.

Q. (By Mr. Bakaly): You had opportunity to observe the operations of a mail room at the place you worked; did you not? A. Yes.

Q. And you did observe that there were many part-time employees in this organization; did you not?

Mr. Mark: I am going to object to that. I think that's [221] completely immaterial and irrelevant to this proceeding. The fact that Mr. Clark observed mail room employees at some establishment running around and doing their jobs has nothing to do with this proceeding, and has nothing to do with any of the issues in this case.

Trial Examiner: What it would bear on, as I see it, is the alternative that might have been contemplated by Mr. Clark, Sr. and junior—and I will use the term loosely—in connection with this issue as to whether he was discharged or left voluntarily.

I think it arguably might have some connection with that, Mr. Mark.

(Testimony of Bernard Clark.)

The people—what we are dealing with here now are events that no one really controverts very much, at least as to what happened; but the interpretation and the inferences to be drawn from the things that surround these events is what presents the problem. And I think that this may have some bearing on that aspect of it.

So—did you observe people doing part-time mailing work in the course of your employment in the printing end of the I. T. U.?

The Witness: Yes.

Trial Examiner: Did you observe that, Mr. Clark?

The Witness: Are you making reference to where I work?

Trial Examiner: Well, you could start there. [222]

If you knew it was common to have part-time mailers, if you observed it there. Did you have any exposure in the printing trade where you wouldn't have a reasonable basis for concluding that the same conditions of employment prevailed in other printing or publishing establishments, or if you didn't know, why say so.

The Witness: I really couldn't say that I knew for sure that there was part-time employment for them.

Mr. Bakaly: Well, you testified the other day that Mr. Babior was a good personal friend of yours.

The Witness: Not a good personal friend. He works where I do.

Q. (By Mr. Bakaly): And a man you talked to on several occasions, you testified, I believe; isn't that right? A. That is true.

Q. And he is an official of the Mailers Union?

(Testimony of Bernard Clark.)

A. I understand that he's vice-president.

Q. Mr. Babior is vice-president? A. Yes.

Q. Did you talk to him about the working conditions of the mailers in Los Angeles?

A. Working conditions?

Q. Yes.

A. No. I don't believe so.

Q. When you complained about the working conditions of your [223] son in Redondo Beach, didn't you naturally ask him about working conditions of mailers in Los Angeles, to see if they were the same or worse?

A. I knew the approximate hours that the men worked where I worked.

Q. You knew the hours they worked. You also knew some of them worked part-time, didn't you?

Trial Examiner: He has already answered that.

Mr. Bakaly: Well, he's been hedging on this, and I don't think there's any need for it. I think the answer is obvious.

Trial Examiner: Maybe that's true, Mr. Bakaly, and I'm encouraging Mr. Clark to tell us as freely as he can what you do know, or have a reasonable basis to believe, with respect to employing part-time mailers, and this goes back again to the fall of 1959.

Mr. Mark: I am going to move that the reporter strike from the record the remark about "hedging."

Mr. Bakaly: I think it is obvious—

Mr. Mark: I object to respondent's counsel characterizing the witness' testimony in this manner. I don't believe that this witness has hedged at all.

(Testimony of Bernard Clark.)

Mr. Bakaly: The record speaks for itself.

I'm entitled to characterize the witness' testimony.

Mr. Mark: I think that if Mr. Bakaly wishes to characterize the witness' testimony, he can do that in final argument, [224] not now.

Trial Examiner: I don't think it will either hurt or help the record at all, either one way or the other, Mr. Mark.

Mr. Mark: I am just interested in not seeing the witness badgered, Mr. Trial Examiner.

The Witness: I appreciate that.

Mr. Bakaly: I do, too.

I am not badgering the witness. I am just trying to get some straight answers out of him. I think the Examiner will agree that I have had great difficulty in getting straight answers to questions which the witness knows the answers to.

Trial Examiner: The witness may be trying to be careful and objective, and may have reasons that are quite valid for being apparently overcautious in his answers.

We want, Mr. Clark, for you—I am going to encourage you to tell us, and maybe we can wind this subject up, what your understanding was when you approached this union representative as to working conditions for part-time mailers in the Los Angeles area with respect to hours and rates of pay, as contrasted to the hours and rates that your son was getting

Now, what was your understanding about that?

The Witness: Well, that they did work a much

(Testimony of Bernard Clark.)

shorter day, and that they received a greater amount of money for it.

Trial Examiner: All right. And was it your understanding, also, that, in addition to your own place of employment, there [225] were part-time mailers employed in this general area?

The Witness: I really couldn't say because I have been in this place for so long, and I haven't been any place else.

I really couldn't say that at all.

Trial Examiner: As far as you can reconstruct your viewpoint back in the fall of 1959, you can't tell us now whether you then had an impression as to whether part-time mailers were being employed any place else other than where you worked and where David worked; is that what I understand your answer to be?

The Witness: Well, yes. I presume that—that they had that.

Trial Examiner: Well, that's what I was trying to get at.

The Witness: But I—I—

Trial Examiner: You didn't know that as a matter of positive personal knowledge, but assumed that was a condition that was generally prevalent in the publishing and printing industry; would that be a fair statement?

The Witness: Yes. May I make one more statement?

Trial Examiner: Surely.

The Witness: If you would ask whether I knew a

(Testimony of Bernard Clark.)

specific person, if he worked some place part-time, I couldn't say. I couldn't—I had no one in mind.

Trial Examiner: I understand that. All right.[226]

Q. (By Mr. Bakaly): Well, you knew in November and December of 1959, didn't you, Mr. Clark, that in order to get a job as a mailer in Los Angeles part-time, or full-time, a person had to be a member of the I. T. U. Local No. 9? A. Yes.

Q. Isn't that one of the reasons why you assisted your son in becoming a member of the union, so that he could get one of these jobs in Los Angeles part-time?

A. No, sir.

Trial Examiner: Did that play any part at all in your approaching a union representative with reference to getting your son in the union? To make it clearer, did you consider then that if he didn't go to work in some other establishment than the Daily Breeze that he would be in a better position to get work elsewhere at some future date?

The Witness: No, sir. That had nothing to do with it, no, sir.

Trial Examiner: Well, aside from what you thought then, it's true that in the printing industry it is a practical advantage in getting a job to belong to the I. T. U.; isn't that a correct statement?

The Witness: Well, it—it certainly helps and makes it much easier if you belong.

Trial Examiner: And you have been a member?

The Witness: For about 21 years. [227]

Q. (By Mr. Bakaly): Now, on December 19th, you had a conversation with Mr. Collins; is that correct? A. Yes.

(Testimony of Bernard Clark.)

Q. During that conversation did you tell Mr. Collins that your son had joined the union at home?

A. Yes.

Q: Did you have any conversation about the word "amnesty"?

A. Yes.

Q. What was said?

A. Well, Mr. Collins wanted to know how he could just join a union like that. I said he was taken in under the laws of amnesty.

The I. T. U., as I heard Mr. Leathem repeat the oath to him, and he said that under the power invested in him under the laws of amnesty—that was why he was taking him in.

Q. Did you also tell Mr. Collins that David was under amnesty and something was being lined up for him in Los Angeles?

A. No, sir.

Q. Or something was being lined up for him, period, or words to that effect?

A. No, sir.

Q. Now, were you present during this conversation between Mr. Leathem and your son on the 15th?

A. On the 15th? That's—yes.

Q. Did you discuss rates of pay for mailers in Los Angeles [228] at that time?

A. No, sir.

Q. Did you discuss working conditions of mailers in Los Angeles at that time?

A. No, sir.

Q. Now, on the 19th in your conversation with Mr. Collins, did you have a conversation about what mailers could make in Los Angeles?

A. No, sir.

Q. You didn't tell him at that time that the rates of pay at the Daily Breeze were much lower than the rates of pay in Los Angeles?

(Testimony of Bernard Clark.)

A. I may have told him that the pay was low there, that the reason—that this might be the reason why he would have trouble in people leaving, things like that.

Q. You mean in district managers leaving?

A. Yes.

Q. Was it your understanding in Los Angeles that district managers worked as mailers; would that be correct?

A. No, I didn't know that.

Q. Did you say anything about the union's scale for mailers in this conversation with Mr. Collins?

A. No.

Q. Did Mr. Hill make any statement about the union wages? A. I can't recall that, sir. [229]

Q. Is it your testimony then on the 19th of December you did not know the wage rate of the mailers in Los Angeles; is that right?

A. Not exactly. I knew approximately.

Q. I am not asking you exactly, Mr. Clark. What did you know about the wage rates of mailers in Los Angeles?

A. That it was over \$3.00 an hour.

Q. Thank you.

During the conversation on the 15th, do you recall your son David telling Mr. Leathem there were seven full-time mailers employed at the Breeze?

A. Seven full-time mailers? No, sir.

Q. Do you recall him telling you that there were seven part-time mailers at the daily press?

A. No, sir.

(Testimony of Bernard Clark.)

Q. Do you recall him telling you that Dennis Daines was a mailer? A. No.

Q. Did you ever have a discussion with your son or Mr. Leathem concerning whether or not the district managers would come within the mailers union?

A. No, I don't remember that.

Q. You never had any such conversation, or you don't remember?

A. No. We never had such conversation.

Q. You never talked with your son at that time about whether [230] or not the district managers were mailers or not? A. No.

Mr. Bakaly: No further questions.

Cross-Examination

Q. (By Mr. Mark): Mr. Clark, you have testified that you had had some conversations with your son about remaining in school; is that correct?

A. That is true.

Q. And you testified earlier, I believe, that he attended El Camino College? A. Yes.

Q. How far is El Camino College from where you live, approximately? A. Three miles.

Q. And approximately how far is it from El Camino College to the South Bay Daily Breeze?

A. About six miles.

Q. How far is it from El Camino College to Los Angeles?

A. Whereabouts in Los Angeles?

Q. Let's say from El Camino College to the Pacific Press? A. Probably 18 miles.

Q. Isn't it a fact, Mr. Clark that the purpose of

(Testimony of Bernard Clark.)

your visit to Mr. Collins on Saturday, December 19th, was for the purpose of keeping David there in the job as a flyboy?

Mr. Bakaly: Objected to as leading. [231]

Mr. Mark: He's your witness.

Mr. Bakaly: Well, I called him as a hostile witness. I don't believe he can lead his own witness under this procedure, Mr. Examiner.

Trial Examiner: I think the question has really been asked and answered. Perhaps not in that precise form. Anyway I am going to overrule Mr. Bakaly's objection.

Mr. Mark: Would the reporter read back the question?

(Question read.)

The Witness: Yes, that's true.

Q. (By Mr. Mark): And that, as a matter of fact, you had a conversation with Mr. Collins about keeping David working at the South Bay Daily Breeze?

A. Yes, that's true.

Q. And you had no reason to seek employment for David in the Los Angeles area, because you were satisfied with his position at the South Bay Daily Breeze—

Mr. Bakaly: Mr. Examiner, may it be understood that I have a continuing objection to this line of questioning?

Trial Examiner: Certainly.

Q. (By Mr. Mark): —with the possible exception of those eight hours on Saturday?

A. Of the how many hours on Saturday?

(Testimony of Bernard Clark.)

Q. Well, the 12 hours, or whatever hours he worked over his normal eight-hour shift? [232]

A. Approximately eight hours on top of the eight hours. I would agree to that.

Trial Examiner: You liked the location, but not the hours, Mr. Clark? I mean, the geographical location?

The Witness: That is true.

Q. (By Mr. Mark): And isn't it a fact that you also asked Mr. Collins to retain David at the flyboy job?

A. Yes, I did.

Mr. Mark: I have no further questions.

Redirect Examination

Q. (By Mr. Bakaly): Now, Mr. Clark, you weren't satisfied with David's job at the Daily Breeze at all, were you?

A. The location. But the hours, no.

Q. And the pay, no. You weren't satisfied with the pay, were you? A. Not particularly.

Q. A dollar and a half as compared with three dollars an hour? Of course, you weren't satisfied with the pay; is that correct?

A. I never talked to Mr. Collins—

Q. That's not the question I asked, and I want an answer to the question.

Trial Examiner: It isn't responsive.

Were you satisfied with the pay—when you went to see Mr. Collins, that David was getting enough money for the work he was doing? [233]

The Witness: No.

Mr. Bakaly: No.

Q. (By Mr. Bakaly): You knew that David could

(Testimony of Bernard Clark.)

do better in terms of pay in Los Angeles, didn't you, on the 19th of December, 1959?

A. I didn't know there was work available.

Trial Examiner: I think we have been over that. He knew the rate up here was \$3.00 an hour or more, Mr. Bakaly. He has already stated that.

Q. (By Mr. Bakaly): You knew it was \$3.00 an hour or more, didn't you? A. Yes.

Q. And you say that on the 19th of December work was not available in Los Angeles, is that correct? Hadn't you been told on the 15th that a union representative could get David a job—

Mr. Mark: I am afraid that's not the testimony.

Q. (Mr. Bakaly): —if he were fired?

A. No.

Q. In any event, it was testified here that a union representative could get your son a job in Los Angeles, and you knew that on December 19th; isn't that a fact, Mr. Clark?

Mr. Mark: I think the testimony was that it would be possible to get him some work in Los Angeles. I believe the testimony of the witness prior to this was that "we could get him some [234] work in Los Angeles," and that's not a specific job.

Trial Examiner: In substance, that was the testimony and I think that was your testimony; isn't that correct, Mr. Clark?

The Witness: Yes.

Q. (By Mr. Bakaly): You knew that your son could get a couple of shifts a week as a mailer at union

(Testimony of Bernard Clark.)

scale in Los Angeles, didn't you? You knew that on December 19th, didn't you?

A. If he was discharged, yes.

Q: Your answer is that he knew it; is that correct?

Mr. Mark: I think the witness has answered your question.

Q. (By Mr. Bakaly): So it is a correct statement that you were dissatisfied with your son's job at the Daily Breeze because of the low pay and because of the hours; isn't that correct? A. Yes.

Q. And you contacted the union prior to December 15th, 1959, so as to get your son a better job at a higher rate of pay for less hours in Los Angeles; isn't that a fact? A. No, sir.

Mr. Bakaly: No further questions.

Recross-Examination

Q. (By Mr. Mark): Mr. Clark, how much was your son averaging per week, do you know, at the South Bay Daily Breeze?

Mr. Bakaly: That's been asked and answered. We have been over that several times. [235]

Trial Examiner: I think that's right, counsel.

Q. (By Mr. Mark): Just to clarify this point, at the time that you discussed with Mr. Collins the training position that was being offered to David, what figure did he mention?

Mr. Bakaly: I object—

The Witness: \$55.00 a week.

Mr. Bakaly: Just a minute. I object to the question. It's been asked and answered, Mr. Examiner.

Trial Examiner: I think it has.

(Testimony of Bernard Clark.)

Mr. Mark: I think it bears on this particular issue. Counsel for respondent has been hammering away trying to show the reason this witness here had, apparently, in the back of his mind for his son's joining the union was better pay and working conditions, while at the same time it has been our position, and a statement has been made by the witness and testimony has been given, that he went over to Mr. Collins to talk to him about keeping David in his flyboy job; and as a matter of fact, on the flyboy job he was making \$60.00 a week.

Trial Examiner: Mr. Mark, certainly I think we would have to conclude that this procedure of getting his son affiliated with the union was aimed at getting better pay and better working hours, if not at the Daily Breeze, then some place else. I don't see how you could have any other reasonable interpretation of what was done, and from what the record [236] shows so far this was a convenient place to work and if he could work there and get better hours and more money, why he'd like to see him work there.

Mr. Bakaly: Well, I don't think that's what his testimony has been.

Trial Examiner: What I am really doing, and incorrectly perhaps, is to make direct inferences, or arguments, with respect to the evidence—which is premature now, I know.

Mr. Bakaly: I would like to ask one question of this witness just to clear up a point that counsel here has brought out.

Further Redirect Examination

Q. (By Mr. Bakaly): So far as your conversations with Mr. Clark—with Mr. Collins, I am sorry, on the 19th of December were concerned, you stated to him that the reasons you didn't want your son to take the trainee job as a district manager was because the gas mileage would be too expensive, and the insurance would cost too much? A. Yes.

Q. And putting those two things aside, you did not object to Mr. Collins about the salary of the new trainee job, did you?

Trial Examiner: He has already stated that he didn't, Mr. Bakaly.

Mr. Bakaly: He has already testified to that, I know. [237] I just want to make it clear. Counsel is bringing up the difference between the \$55.00 salary connected with the trainee's job and the amount of money that David was getting as a flyboy. The only complaint was the insurance and the gas, according to the testimony.

Trial Examiner: Now, I would like to ask Mr. Clark one question or possibly we will get into three.

Were you present on the occasion when Mr. Leathem came to your home and David was—I guess it was initiated, or made a member of the union, the Mailers Union?

The Witness: Yes.

Trial Examiner: Were you there during the whole conversation?

The Witness: Yes.

Trial Examiner: And what, if anything, was said with reference to David's obligation in connection with

(Testimony of Bernard Clark.)

doing the same kind of work as a condition of being a member of the union? Do you understand what I am asking. I am stating it generally first, and then I will see if it suggests something else more specific.

The Witness: The only condition they made was that he was not to leave the Daily Breeze. If he was to quit the Daily Breeze he would lose membership in the union. Is that your question?

Trial Examiner: Was this said before or after he was [238] sworn in by Mr. Leathem?

The Witness: That was before and after, both. He explained that to him.

Trial Examiner: That his membership was contingent on his continuing to work at the Daily Breeze?

The Witness: Yes. Mr. Leathem brought out that he could not join the union there and then go down and quit and be a member of the union with the rights and privileges.

If he was to quit his job, he would lose his membership.

Trial Examiner: Was there any statement made by Mr. Leathem as to what kind of work David would have to do at the Daily Breeze to continue his membership, or was it just in terms of general employment?

The Witness: He was to keep his present mail room job.

Trial Examiner: Anything else?

Mr. Mark: No, I have no further questions.

(Testimony of Bernard Clark.)

Further Redirect Examination (Continued)

Q. (By Mr. Bakaly): Now, you have contradicted yourself, Mr. Clark. Isn't it a fact that nothing was said about David having to keep the flyboy job? Isn't it a fact that all that was said was that David had to stay at the Daily Breeze? Isn't that really what Mr. Leathem said?

A. Yes. Yes, he did say—

Q. And that nothing was said about what job he was to keep?

A. No. We didn't know of another job being available then. [239]

Q. So nothing was said about that, was it?

A. No.

Mr. Bakaly: All right, thank you.

Mr. Mark: Well, I would like to ask a question.

Further Recross-Examination

Q. (By Mr. Mark): Did you understand that David was supposed to remain at the Breeze?

Mr. Bakaly: I object to that. It is immaterial and irrelevant.

Trial Examiner: Objection sustained. Thank you, Mr. Clark.

(Witness excused.)

Mr. Bakaly: What is your pleasure, Mr. Examiner, I have two witnesses, Mr. Clark under 43 (b), David Clark, and then Mr. Collins; and then I will conclude.

I am willing to go on. I understand from Mr. Clark that David has to leave before 2:00 o'clock.

Trial Examiner: You can call David Clark now, and then we can take our lunch break.

Mr. Bakaly: I would like to call David Clark under 43 (b).

DAVID CLARK

a witness recalled by and on behalf of Respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination [240]

Q. (By Mr. Bakaly): I want to direct your attention to the conversation that you had with Mr. Leathem and your father on December 15th, 1959.

At that time you were asked by Mr. Leathem the number of employees in the mail room of the Daily Breeze; is that correct?

A. That is correct.

Q. Is it true that at that time you told him there were seven mailers employed in the Daily Breeze?

A. What kind of mailers?

Q. Full-time mailers. A. No.

Q. You did not? A. No.

Q. You have never told him that there were seven full-time mailers at the Daily Breeze?

A. I think I told him that there—that they had seven full-time people in circulation that helped, you know, did work in the mail room.

Q. Who were those people?

A. The seven?

Q. Yes. What were their names?

A. Well, there's Dennis Daines, Lee Angelo, John Byers, Jimmy Erickson—I don't know. He had so

(Testimony of David Clark.)

many new ones in there at the last I couldn't tell you their names. [241]

Q. Did you consider Dennis Daines a mailer?

A: Up until the last, yes.

I wouldn't consider him a mailer now.

Q. You would not consider him a mailer?

A. No.

Q. You told Mr. Leathem that there were seven full-time people that did mailers' work; is that right?

A. That did some mailers' work, yes.

Q. Well, in your opinion, being a journeyman mailer, you would say that Dennis Daines and Leo Gagnon and the district managers at the Daily Breeze, the seven of them who were working on December 21st, were mailers and are now mailers; isn't that correct?

A. No.

Q. Did you state to Mr. Leathem on the 15th that there were seven part-time employees at the Breeze?

A. No. I didn't say part-time mailers, no.

Q. Isn't it a fact that you believed on December 21st that there were seven part-time mailers employed at the Breeze? A. Not mailers, no.

Q. I'd like to show you your affidavit, General Counsel's No. 2, dated the 24th day of December, 1959; and I show you Page 6 and ask you if that is your signature on that page.

A. Yes, it is, sir.

Mr. Bakaly: I offer Page 4 of this affidavit into evidence, the paragraph starting, "The paper has * * *." [242]

Are you familiar with this?

(Testimony of David Clark.)

Mr. Mark: Yes, I am.

Mr. Bakaly: This is a strict impeachment. There is no question here of recollection.

Trial Examiner: This document is in as General Counsel's 2 for identification, but you are offering in evidence the second paragraph on Page 4; is that right?

Mr. Bakaly: That is right.

Trial Examiner: And you say that there is no question this is a strict impeachment?

Mr. Bakaly: That's right.

Trial Examiner: Any objection, Mr. Mark?

Mr. Mark: Just a moment, please.

The point of my objection does not go to the admissibility of this, but the admissibility of what is contained therein as it reflects on a conversation which occurred between Mr. Clark and Mr. Leathem.

The affidavit recites merely a statement that was made by David Clark to Abraham Siegel, a member of the Board, and in no way recounts the conversation between Mr. Leathem and Mr. Clark.

Mr. Bakaly: That has nothing to do with the conversation. I asked him a direct question as to whether there were mailers there.

Trial Examiner: There is no question that this does not [243] refer to that conversation, but it is being offered as an inconsistent statement and I think that it is admissible on that basis.

Mr. Bakaly: And it is offered for impeachment, and it is offered also as a hearsay statement to prove the truth of respondent's contention in answer to the

(Testimony of David Clark.)

charging party, that there were seven full-time mailers employed at the Daily Breeze.

It is offered for two purposes: To prove that there are seven full-time mailers, that Dennis Danes was a mailer, in the opinion of this individual; and it is offered also to impeach David Clark's present testimony that there were no mailers except himself and two kids, two children.

Mr. Mark: If he wants this whole thing in as probative evidence, I have no objection. I think that the entire document should be submitted, not merely a part of it.

Mr. Bakaly: I am not going to be bound by everything here.

Trial Examiner: I think the document should come in, but you're offering it for this second paragraph on Page 4; is that right?

Mr. Bakaly: At the present time. There may be other parts that I will offer later.

Well, I guess the best thing to do is to put the whole document in.

Trial Examiner: I think it is admissible and I will receive [244] it.

Mr. Bakaly: The whole document, then?

Trial Examiner: Yes.

Do you have the original of this so that the reporter can mark it?

Mr. Bakaly: Do you want me to offer it as my exhibit, or does it come in as General Counsel's Exhibit 2?

(Testimony of David Clark.)

Mr. Mark: It has been marked as General Counsel's Exhibit 2.

Trial Examiner: I think it better be re-marked, then, since you are offering it.

Mr. Mark: Since Mr. Bakaly is going to offer the exhibit, I will withdraw the exhibit, and withdraw the identification of General Counsel's No. 2

(Thereupon, the document above referred to as General Counsel's Exhibit 2, was withdrawn from identification.)

Trial Examiner: Naturally, all that eventuates from this is that we won't have a General Counsel's Exhibit 2, is that correct?

Mr. Mark: That is correct.

(Thereupon, the document above referred to, previously marked General Counsel's Exhibit 2 and withdrawn, was re-marked Respondent's Exhibit 5 for identification.)

Trial Examiner: And there is no objection to its being received in evidence. [245]

Mr. Mark: No objection, as long as the whole document is going in.

(Thereupon, the document heretofore marked Respondent's Exhibit No. 5 for identification, was received in evidence.)

Q. (By Mr. Bakaly): Did you tell Mr. Leathem on the 15th the functions and duties of the employees working in the mailroom?

A. Well, I told him what my job was, what my duties were; and I told him that there were these dis-

(Testimony of David Clark.)

district supervisors doing some—you know, doing some tying of the bundles, you know, and things like that.

Q. Did you tell him that they took—that they stacked the bundles and tied them, the district managers?

A. I don't know if I—I don't know. I think I said "tied them." I don't know if I said "stacked them" or not.

Q. And that they carried them and put them out on the trucks; did you tell him that? A. No.

Q. Isn't it true, Mr. Clark, that he told you that the district managers were mailers? A. No.

Q. Where is the Pacific Press located?

A. It is located on Soto Street, Huntington Park.

Q. And Rodgers-McDonald is located where?

A. Fifth Avenue—Fifth Avenue, or something. I don't know [246] the address. I know where it is at. It is in Los Angeles, somewhere.

Q. Isn't it true that it takes you just about as long on the Freeway to go from El Camino College to the Pacific Press and Rodgers-McDonald, as it does to drive down to the Daily Breeze?

A. In terms of time? On the Freeway from my house it takes a good 40 minutes.

Q. I'm talking about from El Camino College.

A. Okay. From El Camino College, say, 35 minutes.

It's only three miles from my house to El Camino College.

Q. How long does it take you to get from El

(Testimony of David Clark.)

Camino College down to the Daily Breeze? Twenty minutes?

A. It wouldn't take any more than 15, I'm sure.

Q. You don't mind driving that extra time to Pacific Press, do you?

Mr. Mark: I object.

Trial Examiner: Sustained.

Q. (By Mr. Bakaly): Now, you were told by Mr. Leathem on the 15th that your union membership was conditioned upon your staying at the Daily Breeze; is that correct? A. That is right.

Q. You were not told that it was conditioned upon your staying in one particular job, were you?

A. Not the job, no. Not the job.

Q. Thank you. [247]

And you testified the other day that you did not talk to any union representative between December 19th and December 21st; isn't that right?

A. From when?

Q. December 19th to December 21st, over that weekend. You did not talk to any representative of the mailers' union over that weekend, did you?

A. No.

Q. Prior to the afternoon of December 21st, did you talk to any representative of the union?

A. No, I did not.

Q. So you did not ask any representative of the union, either on December 19th, December 20th or December 21st up until the time that you left your employment at the Daily Breeze, whether or not you could become an assistant or a trainee district manager?

(Testimony of David Clark.)

A. But my father did.

Q. Let me get the answer to the question.

A. Did I, personally?

Q. Yes.

A. No. I didn't have any conversation, no.

Q. You say your father talked to the union between December 19th and the 21st?

A. Yes. It was one of these days, I'm pretty sure.

Q. Your father talked to the union on the 21st after you had [248] left your employment; isn't that it?

A. Yes. He phoned them up. Well, no. Maybe I misunderstood him. He said something—I told him about what had happened, you know, and I thought he said he talked to Elmo Mathieson—maybe I misunderstood.

Trial Examiner: When did this happen?

The Witness: I thought it was Sunday, but I don't know. I could be mistaken, but I thought it was Sunday. He came down to the Breeze and said he was going to talk to the union after that, after that afternoon; because I remember distinctly that that is what he said.

Trial Examiner: This is the Sunday before your termination?

The Witness: The Sunday before the Monday, yes. It would be the 20th.

Q. (By Mr. Bakaly): Well, you made up your mind not to take the job as trainee on Saturday, the 19th, didn't you?

A. Well, I wasn't sure, no, if I could take it or not.

(Testimony of David Clark.)

That's why I wanted to talk to my dad, have my dad come down.

Q. I show you Respondent's Exhibit 5 and ask you to read the paragraph—the first two or three sentences starting on Page 4 and going on to Page 5. I ask you to read it to yourself.

A. About this here, you mean (indicating)?

Q. Does that refresh your recollection that your mind was [249] made up—

A. It doesn't say that my mind was made up.

Trial Examiner: Let him finish the question.

Mr. Bakaly: At least I am entitled to do that. May I have the start of the question, please?

(Question read by reporter.)

Q. (By Mr. Bakaly): —on Saturday the 19th not to take the job as trainee?

A. No. That doesn't say that my mind—

Q. Your answer is that it does not refresh your recollection? A. Well, yes.

Mr. Bakaly: I would like to read this sentence: "On Monday, December 21st, 1959, I came to work as usual. After about 15 or 20 minutes Collins called me up to his office. He asked me, 'Well, have you made up your mind?' I replied that I had—it was the same as it was Saturday, 'I can't take the job.'"

I have read that into the record for purposes of continuity.

Q. (By Mr. Bakaly): Now, you testified that in your conversation previously—you did have a conversation on December 18th with Mr. Collins, that would be on a Friday?

(Testimony of David Clark.)

A. That's right.

Q. And you testified that Collins asked you for your card; is that right?

A.. He didn't ask me for it. He asked me if I had it.

Q. He asked you if you had the card. What did you tell him? [250]

A. I told him, "No."

Q. I believe you testified in this proceeding that you did not tell him that you had joined the union?

A. That's right.

Trial Examiner: This was on what date? That last question went to what date?

Mr. Bakaly: December 18th.

Trial Examiner: I see.

Did you understand that?

The Witness: Yes, un-huh.

Q. Did you have a conversation with Mr. Collins on Tuesday, December 22nd? A. Yes.

Q. And during that conversation did Mr. Collins ask you where you had signed up, whether it was at the union, at home, or at the plant? A. Yes.

Q. And in that conversation did you reply that you signed up at home?

A. I told him I signed up at the house, yes.

Q. And did Mr. Collins look surprised at that?

A. He sort of asked, I think, he acted a little surprised about it. Maybe one person wouldn't interpret it that way, but that's the way it seemed to me.

Q. I show you your affidavit which has been submitted in [251] evidence as Respondent's Exhibit No.

(Testimony of David Clark.)

5; you state here that "He also asked me where I had signed up in the union—whether I had signed up at the plant. I replied that I would sign up at home."

Is that correct? A. Yes, that's right.

Q. And I believe you stated that he said he was paying the men full-time union wages; is that right?

A. What he said was that he thought he was paying, you know full-time—paying the men full-time union wages.

Q. And you stated that in your affidavit, didn't you?

A. Yes.

Q. Who were you referring to when you said "them"? Were you referring to the mailers?

A. Not me, no.

Q. What men was Mr. Collins referring to?

A. I imagine he referred to—oh, probably Dennis Daines.

Q. Dennis Daines? A. Yes.

Q. How about Leo Gagnon?

A. Probably.

Q. When Mr. Collins told you that he was paying the full-time men union wages, you understood him to mean mailers' union wages; isn't that correct?

A. I don't know. He didn't say what union wages.
[252]

Q. I'm asking what you understood him to mean.

Mr. Mark: I object to that as calling for a conclusion on the part of the witness. It may not have been within the witness' knowledge at all.

Trial Examiner: Yes. The objection is sustained.

Mr. Bakaly: This whole document is in, isn't it?

(Testimony of David Clark.)

Trial Examiner: That is correct.

Mr. Bakaly: That's all I have.

Cross-Examination

Q. (By Mr. Mark): David, may I have Respondent's Exhibit No. 5, please?

Dave, referring to Page 4 in the paragraph which refers to the mailers, what seven full-time mailers were you referring to?

A. I don't know. I mean, there wasn't seven full-time mailers. There were seven full-time men, but not mailers. They weren't strictly mailers.

Q. What were they? What was their position?

A. Supervisors, district supervisors, I guess.

Q. And are these seven full-time men you mean by "seven full-time mailers"?

A. I shouldn't have said "mailers."

Q. These people are not really mailers, are they?

A. Oh, no. They aren't mailers, no.

Q. In regard to Saturday, December the 19th, how late did you [253] work that day?

A. That's when they had a double edition, so I went in at—I don't know, 9:00 o'clock, or 9:30; and I worked until 6:00, I think.

Q. 6:00 p.m.? A. Yes, 6:00 p.m.

Q. And it was on that particular afternoon that your father had a conversation with Collins, to your knowledge? A. That's right.

Q. And the next day was Sunday?

A. That's right.

Q. Did you go to school on Monday morning?

A. That was during the Christmas vacation.

(Testimony of David Clark.)

Q. So that on Monday, December 21st, you were out on Christmas vacation already?

A. That's right.

Q. What time did you go to work at the Daily Breeze?

A. 11:00, 11:20, something like that.

Trial Examiner: A.M.?

The Witness: A.M., yes.

Q. (By Mr. Mark): What time did you come back from the Breeze?

A. What time did I get home?

Q. Yes.

A. Somewhere around 1:00, maybe a little after.

Q. What time did you go to work at the Pacific Press? [254]

A. It was 11:30 at night.

Q. Was it in between 1:00 o'clock on Monday, December 21st and 11:30 of that same date that your father called Mr. Mathieson?

A. Yes, it was.

Q. And to your knowledge, were there any calls besides this?

A. No.

Q. So that the call you referred to was a call made by your father to Mr. Mathieson during that period of time between the 19th and the 21st?

A. Yes.

Q. Was that call made on the 21st?

A. What do you mean? The one I was talking about before?

Q. Yes.

A. I said I don't know whether he talked to Mr. Mathieson or not. I don't know who it was.

(Testimony of David Clark.)

Q. To the best of your knowledge, did your father make any other calls? A. No.

Q. And to the best of your knowledge did this call to Mr. Mathieson take place after you had terminated?

A. Yes, it was.

Redirect Examination

Q. (By Mr. Bakaly): So that as far as you know, from the time on December 19th when you were offered the job as trainee [255] until the time that you left on December 21st, no contact was made with the union? A. By me, you mean?

Q. As far as you know.

A. Contacted by whom?

Q. You or anybody else, to your knowledge, during that period of time.

A. I thought my dad did. Like I said before, I may have misunderstood. I don't know.

Q. I thought you just finished saying that this conversation was after, sometime after 1:00 o'clock.

A. I am talking about another time.

Q. You think that there would be another conversation?

A. As far as I know. I may have been mistaken.

Q. But this is just a supposition on your part, isn't it? You don't have any recollection that another conversation took place, do you?

A. No. I'm pretty sure, though.

Q. You did not make any such calls yourself?

A. No, I did not.

(Testimony of David Clark.)

Mr. Bakaly: I guess that's all I have.

Mr. Mark: That's all.

Trial Examiner: You are excused.

(Witness excused.)

Trial Examiner: Do you want to start with Mr. Collins or [256] do you want to break now?

Mr. Mark: I would like to call Mr. Clark once more.

Trial Examiner: Mr. Clark, would you resume the stand? Let the record show that Mr. Clark, Sr. has resumed the stand.

BERNARD CLARK,

recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

Mr. Mark: Let the record also show that General Counsel is calling this witness out of order with respect to one or two items of testimony.

Mr. Bakaly: I have no objection.

Trial Examiner: All right.

Direct Examination

Q. (By Mr. Mark): Mr. Clark, after your talk with Mr. Collins, did you have any conversations over the week end with any representative of the Mailers' Union No. 9, that you recall?

A. I vaguely have a recollection of it now, yes.

Q. All right. Just for purposes of clarifying the record, you say you vaguely recall it now. How was

(Testimony of Bernard Clark.)

your memory refreshed about this particular conversation? A. I remember talking to Mr. Leathem.

Trial Examiner: Between Saturday and Monday?

The Witness: Yes, between Saturday and Monday.

[257]

Trial Examiner: Between the 19th and the 21st?

The Witness: I think it was Mr. Babior that I talked to and told him about this trainee program that they had for David and—

Q. (By Mr. Mark): Do you recall whether you talked to him in person or on the phone?

A. No, it was on the phone.

Q. And when was this, as best you can recall? Was it late at night, early in the evening on Sunday or when?

A. I think it was Saturday evening.

Q. Late in the evening or early in the morning?

A. I couldn't tell you, sir.

Q. And did you talk—whom did you talk to first?

Mr. Bakaly: —if he can recall anybody.

The Witness: I really can't say, sir. I—

Q. (By Mr. Mark): And who were the parties that you talked to that night?

A. I remember talking to Mr. Leathem.

Q. And you called Mr. Leathem? A. Yes.

Q. And where was Mr. Leathem?

A. See, he was at work, I remember that. But where he was working, I don't remember.

No, I don't remember. I think it was the Examiner, but I am not sure. [258]

(Testimony of Bernard Clark.)

Q. And at that time, what did you talk about? What was your conversation?

A. I told him that the Daily Breeze had offered Dave a job as a trainee, where he would not be working in the mailroom; and if he did not accept it they were going to let him go.

Q. And what did Mr. Leathem say to that?

A. Well, he said that he didn't have to take that trainee job, that he could continue on working as a mailer.

Q. As what?

A. That he could continue on working at his mailing duties.

Q. As a mailer where?

A. At the South Bay Daily Breeze.

Q. Was that the end of your conversation, as you recall? A. Yes.

Q. Did you talk to anyone else on that evening?

A. Like I say, I seem to think that I talked to someone else. It could have been Mr. Babior, but I really can't say.

Q. Do you recall talking to Mr. Babior or don't you recall talking to Mr. Babior? A. No, I—

Q. As best you can recall.

A. I think—I'm—my memory on that is so vague that I can't recall what really happened on that.

Q. Well, perhaps—do you recall what you talked about?

A. Yes. About David taking the trainee job. [259]

Q. Do you recall whether this conversation occurred before or after David was terminated?

(Testimony of Bernard Clark.)

A. That would have to be Saturday. That would have been before he was terminated.

Q. Then you do recall talking to Mr. Babior on Saturday; is that correct? A. Yes.

Q. And what did Mr. Babior say?

A. That David didn't have to take that trainee program that he had, that he could continue on with his mailroom duties at the Daily Breeze.

Q. And what did you say to that?

A. I said that was—that it was all right. I said it was all right with me, that's what I wanted.

Q. At that time did you discuss any other position for David? A. No, no.

Q. Did you solicit a position for David in any way? A. No, no.

Q. Did you ask that a job be found for David?

A. No.

Mr. Mark: I have no further questions.

Mr. Bakaly: I have a few.

Cross-Examination

Q. (By Mr. Bakaly): In your previous testimony you testified that you did not have any conversation with the union prior [260] to sometime after 1:00 o'clock on the 19th; isn't that right?

A. That's right.

Q. Then these two conversations that you have now recalled would be after that time? A. Yes.

Q. During the short recess here you had a conversation with Mr. Leathem, didn't you? A. Yes.

Q. Isn't it true that he told you about the conversation? A. He asked me if I remembered it.

(Testimony of Bernard Clark.)

Q. And then you remembered it; is that right?

A. Yes.

Q. Your memory is still quite vague, isn't it?

A. That's true, sir.

Q. The union representatives, however, did not tell you that David would lose his membership if he took the job as a trainee, did they?

A. Did they say that David would—no, no.

Q. All they said was that he didn't have to take the job? A. Yes.

Q. And this recollection is quite vague; is that right? A. Yes, it is. I'm sorry.

Mr. Bakaly: I have no further questions.

Mr. Mark: I have no further questions.

Trial Examiner: Has this Mr. Babior been identified in the [261] record?

Mr. Bakaly: He is the man who Mr. Clark first spoke to, the vice-president of the Mailers' Union at Rodgers-McDonald.

Trial Examiner: Thank you, Mr. Clark.

We will be in recess until 1:30.

(Whereupon, a recess was taken until 1:30 p.m.)

[262]

After Recess

(Whereupon, the hearing was resumed, pursuant to the taking of the recess, at 12:40 p.m.)

Trial Examiner: On the record.

Mr. Bakaly?

Mr. Bakaly: Respondent will call Mr. Collins.

Trial Examiner: Would you come up here, please, Mr. Collins?

WALTER HOWARD COLLINS

called as a witness by and on behalf of respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Bakaly): State your full name, please?

A. Walter Howard Collins.

Q. What is your occupation? By whom are you employed?

A. I am circulation manager employed by the South Bay Daily Breeze.

Q. When were you first employed by the South Bay Daily Breeze? A. About May, 1953.

Q. What positions have you held at the dates thereof from May 1953 to date?

A. I was hired as a district manager in May of 1953, and I don't recall the dates exactly, when I became assistant circulation manager; but it was about a year to a year and a half prior to becoming circulation manager in March 1959.

Q. What are the types of papers published and distributed [263] by the Breeze, and what are your duties in connection therewith?

A. We publish a seven-day a week local daily newspaper in Redondo Beach, covering the South Bay cities.

Also, we have two throwaways—we refer to them as advertisers.

My duties consist of being in charge of the distribution, the district managers, the mailroom, everything to do with the circulation department.

Trial Examiner: Off the record a minute, please.

(Discussion off the record.)

(Testimony of Walter Howard Collins.)

Trial Examiner: On the record.

Does your circulation department also include new subscription activities?

The Witness: Yes, sir.

Trial Examiner: You're in charge of that part?

The Witness: My district managers solicit a couple of evenings a week, minimum for the business.

Trial Examiner: Do you have any form of solicitation through a separate department?

The Witness: Not if I can help it.

Trial Examiner: Is there a separate group of people?

The Witness: No, there is not a separate group.

Trial Examiner: The district managers, boys, are the only ones who solicit?

The Witness: That's right. [264]

Q. (By Mr. Bakaly): How many people do you supervise, Mr. Collins?

A. Mr. Daines, who is in the office as my assistant. He is a circulation supervisor. Mr. Gagnon, plus seven more full-time district managers—do you mean that I direct or supervise directly?

Q. Yes. Whom do you direct—or did direct on December 21, 1959—would really be a more relevant question.

A. Well, indirectly the men that distribute—we have contractors that distribute—but our throwaways, there are considerable men in that group. They actually fall under my supervision, but it's indirectly.

250 carriers fall under my responsibility, but indirectly through the district managers.

Q. What about a flyboy?

(Testimony of Walter Howard Collins.)

A. Yes. He would be under me. You could say either directly or indirectly. He's responsible to me, but I also have someone in charge of the mailroom.

Q. Do you know a David Clark and his father, Mr. Clark? A. Yes, quite well.

Q. How long have you known them?

A. Well, I've known Dave at least six years, I think, if I remember right. I think it was about this time in 1954 that I, as a district manager, hired Dave as a carrier for the Daily Breeze. [265]

At that time he was not an employee because our carriers are independent contractors, but he carried the newspapers for me for a good number of years.

I'm very friendly, have been, with his father and mother, knowing them both by Jack and Edna; on a lot of occasions, practically daily, had a meeting with his dad, when he would come down for David and have coffee with me.

Q. How would you describe the character of your relationship with Dave Clark and his father?

A. I would call it a friendship, I don't think David ever looked upon me as a big boss, by any means.

We got along real well. Dave was an outstanding paperboy. The fact is that at the time he was a newspaper boy, I nominated him and he subsequently the carrier of the year award for the Daily Breeze. I don't know what the year was, probably around '55 or so, his second year on the paper.

It's always been a friendly relationship.

Q. Would you say much more than the normal relationship of an employee and employer?

(Testimony of Walter Howard Collins.)

A. Yes, sir.

Q. Did you have any special interest in Dave Clark's development and future?

Mr. Mark: I will object to that. I think that that is irrelevant and immaterial.

Trial Examiner: Wouldn't it go to the question of whether [266] Mr. Collins might consider this change of activity an improvement? This would be a preliminary question to his inquiry about the trainee program, I assume.

Mr. Bakaly: It is certainly preliminary to that. It's also background, contrary to the contention that there was any discrimination against him, or that he had done any harm to the kid, to show that he was actually interested in his well being.

Trial Examiner: I would not necessarily agree with the latter part of that, not necessarily.

I am not saying I disagree. But I think it is relevant on the question of whether this trainee program, this projected job, was more compatible with what Mr. Collins thought was good for Dave.

Mr. Mark: The question was, "Were you interested?" And that's kind of vague and very general.

I believe we should keep this a little more specific.

Mr. Bakaly: I am trying not to lead the witness.

Mr. Mark: I thank you.

Mr. Bakaly: I think the witness understands the question.

Trial Examiner: I am going to take it. I don't think there is any harm in taking it in this form.

(Testimony of Walter Howard Collins.)

Mr. Bakaly: Do you understand the question, Mr. Collins?

Trial Examiner: Would you read it, please?

(Question read by the reporter.) [267]

The Witness: Very much so. The fact is his father on—

Trial Examiner: The answer is “Yes?”

The Witness: Yes.

Trial Examiner: All right.

Q. (By Mr. Bakaly): What interest did you have in David Clark?

A. Well, as I stated before, he was an outstanding carrier boy, he never gave me any trouble, which as a district manager is a nice type of kid to have.

Then later on, after he gave up his newspaper route, I was instrumental in getting him his job as flyboy with the Daily Breeze, and during his period of flyboy he was graduated from high school, and, as a lot of boys do that I know, I think I know boys pretty well, and they all get the idea that they kind of want to work a year or so and do something else just to relax.

On my own, as well as prompting and by request of his father, I talked to David about continuing college in September.

He didn't want to go back, so I did on several occasions—

Q. The answer, I take it, is that you were interested in seeing that Dave went to college; is that it?

A. Very much so, sir.

Trial Examiner: I think the answer is clear.

(Testimony of Walter Howard Collins.)

Q. (By Mr. Bakaly): When was Dave Clark first associated at [268] the Breeze?

A. You mean as a carrier boy?

Q. As a carrier.

A. As an employee?

Q. As a carrier.

A. That was six years ago, this month, I believe.

Q. What position has he held since then?

A. He carried papers for two and a half maybe three years—I don't recall exactly how long it was—and then there was a period of time when his younger brother, Chuck, took over the route; and I don't know whether, to my knowledge, he worked any place in the meantime, but about the summer of 1958, I believe it was in July if I am not mistaken, like I say, I was instrumental in bringing him in there to replace another flyboy that had gone to another job.

Q. Can you tell us the approximate number of hours a week and the pay per hour that Clark worked, let's say, during the period of April or June of 1959 to December 21st 1959?

A. Well, about in June the time changed drastically, because on the 31st of May we began publishing a Sunday paper. Prior to that time he had been working 30, 33, 34 hours a week.

Did you ask me the rate of pay?

Q. Yes.

A. I believe at the time, under the previous circulation manager, he was getting a dollar an hour to begin with, and [269] I think he was making \$1.15 when the other circulation manager left.

(Testimony of Walter Howard Collins.)

Q. And that, you have testified, was when?

A. The other circulation manager left that March.

Q. Of 1959?

A. Of '59, yes.

Q. And what rate did he have since then?

A. I was circulation manager not too very long before I increased his pay to \$1.35.

Mr. Mark: I wish that this witness would be responsive.

The question was: "What were his rates of pay."

Mr. Bakaly: Oh, well, Counsel, I think the answer is very responsive, if it is any issue here at all.

Trial Examiner: Overruled. Go ahead. You increased it to \$1.35 after what period of time, Mr. Collins?

The Witness: Well, I couldn't really say exactly. It was a very short time after I took over the circulation manager job, which was in March; so perhaps it was April or May before I got him that increase to the \$1.35, and shortly thereafter, a very short period after, it went to \$1.50 an hour.

Q. (By Mr. Bakaly): And that's what he was earning in December of 1959?

A. Yes, sir.

Q. And in December of 1959, approximately how many hours a week was he working, if you recall?
[270]

A. Due to our Sunday paper, he was working quite a few hours Sunday night.

Q. Well, that is not responsive.

How many hours per week was he working?

(Testimony of Walter Howard Collins.)

A. He was working about 40 hours, maybe a little more, a little less; sometimes it would be less.

Q. Sometimes it would be less and sometimes more?

A. Yes, sir.

Q. Do any unions represent employees at the Breeze, any of your employees?

A. Oh, yes. The entire—

Q. Which unions and which employees?

A. I don't know what unions have jurisdiction over them. Our stereotype, our composing room, press room, the entire mechanical department, is all union.

Q. You have the pressmen's union in there?

A. Yes, sir.

Q. The ITU Printers?

A. I don't know if they are under the ITU. I am not that familiar with it.

Q. The stereotypers are union?

A. They're all union, yes.

Q. Are the mechanical departments closely associated with your department as to physical location?

A. Well, very much so. They're—my connection and my work [271] as far as the distribution end of the newspaper, is probably closer to the mechanical end than what you would call the front office group.

Q. What is your relationship with these other union members?

A. I guess—we get a lot of new ones over the years that perhaps I don't know—but I would say that I know most of the men in the mechanical department. I have some very close friends among them and we are always together, and the printers, as an

(Testimony of Walter Howard Collins.)

example, they will come down and sit there in my mail-room and have their lunch or the stereotype men will have their lunch in the mailroom. There's no other place for them to have lunch except there.

Our relationship is very friendly.

Q. And when they are eating lunch, and so forth, do they freely discuss the affairs of the union in your presence?

Mr. Mark: I object to the form of the question. "Freely discuss" leads to a conclusion on the part of the witness.

Trial Examiner: Well, eliminating the word "freely," do they discuss these things?

The Witness: May I use the word "freely"?

They discuss it freely with me.

Mr. Mark: I will move to strike that answer.

Trial Examiner: I will regard the answer as being do these people discuss affairs with you or just in your presence? [272]

The Witness: They don't discuss an individual problem with me, but in our general discussions, among my friends—I have my coffee with the stereotype men and all the rest of them—why naturally, I hear and overhear union discussions entirely, all the time.

Trial Examiner: I think that is clear now.

Q. (By Mr. Bakaly): On or about December 18, 1959, did you have a conversation with a member of the stereotypers' union concerning whether or not a representative of the mailers' union had been in the plant?

A. On or about that date, one of the men in the

(Testimony of Walter Howard Collins.)

stereotype department—I don't remember exactly who it was now, I don't recall—asked me if I had been approached by a representative of the mailers' union.

I said, "No. I had not."

And he said that he understood that the men had been around the building, and—

Mr. Mark: I would like to have a foundation laid for that conversation, with whom, when it was held, and so forth.

Mr. Bakaly: Well, he has already laid the foundation. He said the date was December 18th—

Mr. Mark: No, he did not.

Q. (By Mr. Bakaly): Was anyone else present besides you and the stereotype men?

A. I don't recall who all was there, because, as I say, I have [273] coffee together with the stereotype foreman, who is a very close friend of mine.

Q. Where did this conversation take place on the 18th?

A. I believe it was morning coffee across the street. There were several printers—I don't recall exactly who it was or how many were present, but it was several.

Q. Have you told us all that was said at this conversation?

A. Someone asked me if I had been approached by the mailers' union. They were inquisitive, and, naturally, I become inquisitive and I said that I had not been approached by anyone, and I still haven't, to this date.

(Testimony of Walter Howard Collins.)

Q. On the 18th of December, did you have a conversation with David Clark?

A. Yes, I did.

Q. And at what time did that conversation take place?

A. Being a Saturday, I wouldn't know exactly what time it was.

Q. But it was on the 18th?

A. Was that a Saturday?

Q. December 18th would be on a Friday.

A. Oh, a Friday. It would be some time in the afternoon, because he just worked in the afternoon.

Q. Was anyone else present besides you and Dave?

A. No, I don't believe so, because he was in the mailroom working when I asked him.

Q. What did you say and what did David say, to the best of [274] your recollection?

A. I asked him if he had been approached by someone in the mailers' union, and I thought he had been approached in the plant, and he said, yes, that he had.

Q. What else did either you or David say at this particular conversation?

A. Like I said, I thought he had been approached in the plant. I believe I asked him at the time if he was interested in the mailers' union.

I don't remember the entire conversation.

Q. Do you recall what he stated?

A. No, I don't.

Q. Do you recall whether or not he stated that he had been contacted at home or at the plant?

(Testimony of Walter Howard Collins.)

A. No, I believe he volunteered that information the next day when we talked again.

Q. He did not say, then, on that occasion?

A. No.

Q. Now, has any request been made to you, or to your knowledge any other representative of the Daily Breeze, by any representative of the mailers' union to recognize it as the collective bargaining representative of the mailers employed by you?

A. To the best of my knowledge, no.

May I ask, for what reason? [275]

Q. Go ahead and explain your answer, if you like.

A. They would, if they were to approach us, there would only be one logical person to go to, which would be the publisher of the newspaper, because, naturally, I am not in a position to negotiate with them or enter into any type of agreement; and up to that date Mr. Curry our publisher here, has never been approached.

Q. He has never been approached and you have never been approached?

A. That's right.

Q. How do you know that no one has ever approached him?

A. I asked him and he said, "No."

Q. Directing your attention to the period of time prior to your becoming circulation manager, would you tell us the nature of the employment of the district managers at that time?

A. Prior to that time, we had, I think, aside from myself, only one other full-time man, and the rest of

(Testimony of Walter Howard Collins.)

them were at one time, the biggest share of the district managers, they were all part-time.

The biggest share of them were plant guards out at these various aircraft plants, because their hours were such, as guards, the ones on the graveyard shift, so to speak,—that was the only shift that wouldn't interfere with our hours of operation. In other words, a day shift or a swing shift would [276] interfere with our hours. We needed a man to do some work during those hours and some of these fellows needed more money, and so that's how we got to using those guards.

And then from there we went—I don't know what happened, but we suddenly got a splurge of milkmen, as the guards got changed in their shifts; and what with the changing of the shifts and the changing in the aircraft plants, we got one man that was a milkman and from there on he let it be known to us that there were others available whenever the need be.

Q. Well, was the character of the service of these part-time district managers satisfactory to the Breeze?

A. No. Not in my opinion, no, sir. Because their main job, their main interest laid elsewhere. To them, getting the papers out to the boy's house and dropping the bundle and running home as fast as they could and getting to bed seemed to be all there was to it.

Mr. Mark: I am going to ask, Mr. Trial Examiner that the witness be restrained from volunteering quite as much information as he is doing here. He's not answering the question. He could have answered that last question with a simple "yes" or "no".

(Testimony of Walter Howard Collins.)

Trial Examiner: It wasn't satisfactory. I think perhaps, Mr. Collins, that it would be helpful and a more orderly procedure if you would answer the question fully, but no more than that. [277]

Mr. Bakaly: Well, we have a dilemma here. I think I am not permitted leading questions. If counsel wants me to lead this witness so that I will get briefer replies, I can certainly lead this witness.

Trial Examiner: What he was saying was not exactly responsive to your question. He was explaining why it wasn't satisfactory.

Mr. Bakaly: That would have been my next question.

Mr. Mark: I have no objection to your asking the question. I simply feel that the witness should attempt to confine himself to answering what has been asked.

Trial Examiner: When you go to a little more explanation than was called for, Mr. Collins, it precludes counsel from possibly making an objection, and I think we can perhaps move just as fast if you would wait for the next question.

Mr. Bakaly: Very well, very well.

Q. (By Mr. Bakaly): Was the character of the employment of these part-time district managers steady or was there a constant turnover among the district managers?

A. The last two or three years, quite a turnover.

Q. Now, was there a change in the character of employment of the district managers after, say, April or May of 1959?

A. Yes, there was.

(Testimony of Walter Howard Collins.)

Q. And what was the character of employment after that day?

A. It was my desire to put on all full-time men so that they [278] could work their evenings soliciting and taking care of the districts, the way I felt they should be properly taken care of; and with Mr. Curry's approval, I hired all full-time district managers.

Q. Was one of the reasons why this was done an attempt to alleviate the necessity of having as much turnover as there was among the part-time people?

A. Yes, sir.

Mr. Mark: Objection. That's leading.

Trial Examiner: Overruled.

Mr. Bakaly: Well, I am damned and damned if I don't around here.

I thought I knew how to ask a question.

Q. (By Mr. Bakaly): Would you tell us whether or not this program, that of hiring full-time district managers, was successful in alleviating the problem of constant turnover?

Mr. Mark: I am going to object to that. Either this thing was satisfactory and it was working out or it wasn't satisfactory and it wasn't working out. But when you start using words like "successful," again, I am afraid we are getting an awful lot of personal comment in here, and I don't think it is proper.

Trial Examiner: Mr. Bakaly, it occurs to me the witness can say it reduced the turnover and then, if you want to go into the specifics, you can examine further. [279]

Well, let me ask: Did it reduce your turnover?

(Testimony of Walter Howard Collins.)

The Witness: Yes.

Trial Examiner: Was your circulation increased during this period of time?

The Witness: No, sir. Not too greatly.

Mr. Bakaly: I don't think that you quite understood the question. I will put it another way.

Q. (By Mr. Bakaly): Once you had hired these full-time district managers, was there still some turnover among them?

A. Yes, there was.

Q. Now, would you tell us in your words the problems that would arise because of this turnover?

A. You mean why we have the turnover? The problem arising from that?

Q. The problems that would arise because of the turnover.

A. Any time that you have a district open without a manager on it, it creates quite a few problems.

Number one is the prime necessity of getting the papers to the boy and getting them delivered as speedily as possible; also, the boys becoming very lax in their service and paying their bills and well—their general overall duties became very lax when there was no proper supervision out there on that particular district.

Q. How did you obtain the replacements for a district manager who quit or was sick or something? [280]

A. Well, we would—we had a lot of applicants on file that were looking forward. Once in awhile we inserted an ad in our paper. It was free, so we took advantage of it and advertised for full-time help.

(Testimony of Walter Howard Collins.)

Q. Were you able to get trained personnel as district managers, or did you have to train them?

A. No, sir. There's quite a lack of trained circulation supervisors, so we have to train them. It's quite a long process.

Q. Well, now, did you have any discussions with Dave Clark in the Fall of 1959 concerning this problem that would arise when a circulation manager would quit or be sick or something, the circulation district manager, I mean?

A. Specific talks with him would be hard to pinpoint down to the exact time or date.

Trial Examiner: First of all, did you have any?

The Witness: Yes, sir.

Q. (By Mr. Bakaly): As best you can recall, would you tell us the time and place of such conversations, if you can separate one from the other?

A. No, I can't. Because Dave and I spoke every day about many and various problems, personal things, as we did. But on occasions I talked to him about this and asked him if he'd be interested in filling at any time that I needed him, whenever an emergency would arise, which he offered to do, and did do, [281] on maybe two, three, four occasions.

Q. Was he compensated in any way for the use of his automobile on these occasions?

A. Not in the form of mileage, no.

He was told by myself that any time he put in any extra work or used his vehicle, to put it down on his timesheet. Because I wanted to see that he was compensated for it.

(Testimony of Walter Howard Collins.)

Q. How did you compensate district managers for the use of their automobiles in the fall of 1959?

A. District managers have always had car allowance.

Q. Would you tell us how the amount of this allowance is determined, and so forth?

A. Each one is actually paid a flat amount each week, but I have gone out with them, I have rode all the districts and I know approximately how many miles per day they have to travel and how to compensate for doing that.

Now, you can't always tell how many miles they are going to travel every day. It's not the same. Some junior out here is going to call up and say, "Hey, I'm one paper short," or his mother wants to talk to you about a particular problem or you get an irate customer who wants to give you a bad time; and to compensate for all that I give them far more than their actual daily mileage is, because it's too difficult to pin it down to the exact point.

Mr. Mark: I am going to object and ask that the entire [282] answer be stricken as unresponsive.

Trial Examiner: It may be stricken.

Mr. Bakaly: Could the question be read, please?

(Question read.)

Mr. Bakaly: I think, Mr. Examiner, that's responsive. He is saying that it is not a set amount, that it is a set amount per week and that the amount is determined, not exactly by the number of miles, but that they get more than the number of miles to take care

(Testimony of Walter Howard Collins.)

of a particular situation that might arise, emergency situations, which he has described for us.

Trial Examiner: Let's dispose of it up to this point first.

My trouble about the answer, Mr. Bakaly, is that if we continue to have just this type of answer, I couldn't project very much in using this type of answer as to whether, for example, it covered the people uniformly, whether they all got the same rate for insurance and that sort of thing.

Mr. Bakaly: I was going to take that up in future questions, but I don't see any need to strike this out. I will get to those additional questions as soon as I can.

Trial Examiner: Well, let me ask—I have indicated in the record that it may be stricken and I may reverse that; but I want to ask Mr. Collins a question first.

Do all of the district managers get the same amount for car allowance? [283]

The Witness: No, sir.

Trial Examiner: Does it depend in measure at least on the size of their district and your estimated mileage?

The Witness: Yes, sir.

Trial Examiner: What is the excess, as you have stated, that you allow them over what their actual mileage would require? This is the part that troubles me. I don't know what the excess is or how you arrive at the conclusion as to how much you pay them over what their mileage would indicate.

(Testimony of Walter Howard Collins.)

The Witness: Shall I answer that?

Trial Examiner: Yes.

The Witness: I try to figure a minimum of 8 cents a mile, but it is very difficult to know exactly how many miles he is going to run each day other than the stipulated run he makes each day. For instance, on his route he is hitting each one of these carriers' home in his district, and there are certain days when he might be doing a lot of extra things, because, like I said, as far as customers or carriers are concerned, there's a lot of things that can happen there; and if the kid doesn't deliver a paper route, he will have to take the paper out and throw it from his automobile himself.

Trial Examiner: Well, in the course of your work there, Mr. Collins, I assume that you have acquired some information that would indicate the mileage a district manager totals approximately or on an average, in any given district; isn't [284] that correct?

The Witness: Yes, sir.

Trial Examiner: And that's what I am trying to find out. Is it what you call an extra allowance over and above the absolutely certain driving that the man is going to do, or is it to take care of these other occasions when driving is required?

The Witness: I figure that, sir, that the man would put on approximately—through my own experience I know that he will put on as many miles a day taking care of these little contingencies as they may arise as it would to actually run the district to drop the bundles, so it's approximately double what it would be to run his district.

(Testimony of Walter Howard Collins.)

Trial Examiner: Well, doesn't the 8 cents a mile contemplate this total probable use of the car in any district to arrive at the flat figure the man is going to be given?

The Witness: Do you mean why I use the figure of 8 cents a mile? That's the figure I got when I asked the post office what they were paying, and they stated that was an accepted Government figure.

Q. (By Mr. Bakaly): Isn't it your understanding, Mr. Collins, that the 8 cents per mile is to cover not only the expense of gasoline and tires, but also to cover depreciation, insurance and other expenses arising from the use of the car in business?

Mr. Mark: He's leading the witness again. [285]

Trial Examiner: It is leading, but I think this material is not prejudicial, any leading questions on this aspect. So I would like you to answer that, Mr. Collins.

Mr. Bakaly: Do you understand the question? Would you like it read?

The Witness: Yes, I would.

(Question read.)

The Witness: That has been my impression, that it's an established fact that mileage covers more than just the gasoline consumption, yes.

Trial Examiner: You mean the figure of 8 cents covers other factors?

The Witness: Yes. I think that's fairly common in Government circles.

Mr. Bakaly: In Government circles. Are you familiar with that, Mr. Examiner?

(Testimony of Walter Howard Collins.)

Trial Examiner: That's why I indicated to Mr. Mark that I don't see any harm in a leading question on this subject.

Q. (By Mr. Bakaly): Now, getting back to this problem that occurred whenever a district manager would quit or leave, and the difficulty in having to get somebody to take his place; did you, during the fall of 1959, have any ideas or solutions to this problem?

A. Yes, I did.

Q. All right. And what idea or solution occurred to you? [286]

A. Well, actually, it had occurred to me long before the fall of '59. I had spoken to Mr. Curry, our publisher, on various occasions about establishing a trainee program in circulation, such as we have in our editorial and advertising departments.

It's not always easy to step out and find someone experienced, and it's not easy to break in an inexperienced person. In my opinion, it takes months to do it, and we had discussed a trainee program, perhaps as far back, I'd say, as early as April.

Q. What was your idea of the function of this trainee program? What would have been the duties of this trainee, and so forth?

A. As I saw it, and would have liked to have had it work, was to have the man as an extra man. That was one of the problems that was one of the problems that I discussed with Mr. Curry, it's having to pay a man for actually being an extra man at all times; but we never knew, when someone was unable to show up, when people were sick or a man left me without any

(Testimony of Walter Howard Collins.)

notice, I wanted someone available to step right in.

The trainee would ride the district with the various district managers, become familiar with them and know the job from start to finish.

Q. Well, was it your desire to have your district managers know more than just the duties connected with their particular district? [287] A. Yes.

Q. What did you expect your district managers to know in that regard?

A. Well, to begin with I insisted that they all know the complete mail room operations, and even my job. I wanted them to know my job, and I quite frankly told them that I wouldn't hire a man to work for me that didn't want my job and didn't want to learn it and be able to take it sometime.

Q. During December of 1959, did most of the district managers know the job of flyboy and were they able to perform that function? A. Yes, sir.

Q. Did you ever discuss with Clark this idea of the trainee program prior to December of 1959?

A. Does that have to be answered yes or no?

Q. Yes. Did you have a discussion with him involving that subject? I'd like to know about that and then we can take it from there.

A. Yes, and no.

Q. Where did the conversation take place?

Mr. Mark: Just a moment. The witness has testified, "yes and no," and I'm afraid that is not clear enough.

Trial Examiner: It is certainly something that may be contrary to ordinary practice.

(Testimony of Walter Howard Collins.)

Mr. Bakaly: This is just foundation, but— [288]

Trial Examiner: I think maybe if Mr. Collins will explain first what he means by, "Yes and no," then we can proceed.

The Witness: What I meant by, "Yes and no," was that we had discussed having an extra man in there but it was never discussed with Dave as a trainee program, as in the sense of that word, actually using those words as a definite trainee program; because it wasn't approved until much later.

Q. (By Mr. Bakaly): But the idea of having an extra man who would know the district of each of the district managers so that he could step in in the event that one was sick, or quit, was discussed with Dave; is that correct?

A. Yes. I am certain of that.

Q. Well, now, did you, in December of 1959, obtain approval of this program?

Mr. Mark: I object to that as leading.

Mr. Bakaly: Oh, well, that's foundational, Counsel. You're going to have us here all next week.

Mr. Mark: It's not that. But if there is a trainee program, or if it was discussed and approved we can just as easily know when it was approved,

Mr. Bakaly: I am getting to that, but he's got to know what I am talking about.

Trial Examiner: The objection is overruled.

Mr. Bakaly: You can answer the question yes or no. Did you have occasion to see Mr. Curry concerning the approval of [289] this program?

The Witness: Yes, sir.

(Testimony of Walter Howard Collins.)

Q. (By Mr. Bakaly): What occasion, if any, caused you to attempt to secure final approval of the program in December of 1959?

A. I believe it was about the 15th of December when Mr. Curry also gave me the approval to take Mr. Daines off as a district manager and bring him inside as my assistant.

Q. What did that have to do with your asking Mr. Curry for approval of this training program?

A. It necessitated hiring another man who was inexperienced.

I expected to find an experienced man, but could not find one.

Q. You had some difficulty, I take it, in obtaining personnel to replace Mr. Daines when he became your assistant circulation manager; is that correct?

A. In finding experienced personnel, yes. [290]

Q. And this brought to a head your discussions of the last two or three months concerning the desirability of having a trainee program?

A. Yes. Because I had lost a couple of the full-time district managers, and due to their lack of interest in the work, and maybe not knowing what type of work they were getting into, whether they were going to like it or not, for various reasons they left and left me in the same position of hiring people that were unfamiliar with the work, and I didn't even know at the time of hiring whether they had the desire to learn the newspaper business or not.

Q. Did you have a discussion with Mr. Curry then

(Testimony of Walter Howard Collins.)

regarding the approval of the training program, in December of 1959? A. Yes.

Q. When did this conversation take place?

A. About the 15th of December.

Q. Where?

A. Mr. Curry's office.

Q. Who was present?

A. Mr. Curry and myself.

Q. What was said to you by Mr. Curry and what did you say to Mr. Curry, to the best of your recollection?

Mr. Mark: I'm going to object to that as hearsay.

Trial Examiner: It goes to motivation in laying off or terminating Mr. Clark. This type of evidence is admissible, [291] in my judgment, with respect to the motivation, and is being received for that purpose. Its ultimate acceptance or non-acceptance will depend on the witness here, not on what Mr. Curry said, when it's being used for explaining motivation with respect to the question of district managers.

That is the reason why I am overruling your objection, Mr. Mark.

Go ahead.

Mr. Bakaly: Would you read the question again?

Trial Examiner: I believe that the question was: What was said by you and what was said by Mr. Curry—

Mr. Bakaly: —at this conversation—

Trial Examiner: —at this conversation, or discussion, regarding the approval of the training program?

(Testimony of Walter Howard Collins.)

Mr. Bakaly: That's right.

The Witness: Whenever I hire a new person I have to have his approval, and I walked in there with the notice that I always give him when I hire someone—

Trial Examiner: Excuse me. Maybe it's necessary— to understand it, if you can tell us what you said and what he said, then maybe we can—

The Witness: Well, I went in and told him I had to hire another inexperienced man.

Trial Examiner: All right. What did he say?

The Witness: And I don't recall exactly what he said [292] to that, but I went on to tell him that I felt that there was very definitely a need for this trainee program, and that I wanted to do something about it.

Trial Examiner: Was there anything else said?

Q. (By Mr. Bakaly): What did you recommend to Mr. Curry, if anything?

A. I recommended that we start the trainee program.

Q. What did you tell him with respect to the type of duties of a trainee, the rate of pay, the hours—if anything?

A. We didn't discuss the type of work at that time, because we had discussed it briefly; but he did give me his approval as to my suggestion of starting a trainee program at \$55.00 a week for approximately a 33 hour week.

Trial Examiner: We will take a short recess now.

(Thereupon a short recess was taken.)

Trial Examiner: On the record.

Q. (By Mr. Bakaly): What was decided in this

(Testimony of Walter Howard Collins.)

conversation with Mr. Curry, if anything, concerning the first step in this trainee program?

A. We discussed the trainee program and it was my belief that the first step in this trainee program should be that of a fly boy.

Trial Examiner: Is that what you told Mr. Curry?

The Witness: I told Mr. Curry—I'm sorry—yes.

Q. (By Mr. Bakaly): Did Mr. Curry concur?
[293]

A. He agreed with me, yes.

Q. Did you make any recommendation for a person to fill this position of trainee that Mr. Curry approved?

A. Yes, I did.

Q. And who did you recommend?

A. David Clark.

Q. Why?

A. David Clark was the only logical for the job because he had considerable experience right back dating from the newspaper boy days, and, naturally, he would understand the newspaper boys side of the thing, their problems; and he had—we'll say he had fulfilled a good share of the trainee program already as knowing the mail room procedure, and was in a position to take over as a trainee.

Q. Were there any other conversations that led you to recommend David Clark?

A. I don't know what you mean by that, I'm sorry.

Trial Examiner: Were there any other reasons why you told Mr. Curry he should be the one to be the first trainee?

(Testimony of Walter Howard Collins.)

The Witness: No other than my own personal like for the boy, and the job that he had done.

Q. (By Mr. Bakaly): What did that have to do with it? What did you think that the trainee job would do for Dave Clark, or to his future, if anything?

A. Well, as David had wanted to cut down his hours, it [294] would have given him less hours. It would have amounted to 33 hours a week, because he would have not been required to do any night soliciting as the regular district manager was required to do.

Actually, it would mean less hours than he was putting in and more pay for that number of hours.

Q. Well, did you give any consideration to the fact that he would gain some kind of experience that might be helpful to him in—

A. That entered into it, as—

Q. —later years?

A. —as far as my personal feeling for Dave, that entered into it; but I think one of the important reasons also was that he could have continued college, because it was a part-time job and a little easier on his schedule than the job he had at present.

Q. Did Mr. Curry approve the recommendation of Clark for the job?

A. Yes, he did.

Q. Did you have a conversation with Dave Clark on December 19, 1959?

A. What date was that?

Q. That would be Saturday.

A. Yes, I did.

(Testimony of Walter Howard Collins.)

Q. Where did it take place? [295]

A. I believe I invited Dave over for our usual cup of coffee across the street and explained it to him.

Trial Examiner: Excuse me, Mr. Collins. I'm going to ask you to listen to what your Counsel is asking you.

By way of illustration, all he asked you was where this conversation took place.

The Witness: Excuse me. The conversation took place in the restaurant across the street. It took place across the street at the Spanish Inn.

Q. (By Mr. Bakaly): I might ask here just parenthetically, Mr. Collins, have you had much experience in being a witness in a court proceeding?

A. No, sir.

Q. Now, who was present at this conversation?

A. David Clark and myself and Leo Gagnon.

Q. What was said by you and what was said by David Clark?

A. I told David that the job had been approved. I was happy that I was able to offer him this job, and I explained to him what the approximate hours would be.

Q. What did you say in that regard?

A. I told him the approximate hours would be 33 hours a week. I was basing that on a 12 to 5:30 day, six days a week; and I told him it would be at a salary of \$55.00 a week, and he would be paid for anything over the 33 hours at the rate of what it broke down to, which I think was \$1.67 or [296] \$1.68 an hour.

(Testimony of Walter Howard Collins.)

Q. Now, did you tell him what the duties of this job would be?

A. Yes.

Q. What did you say in that regard?

A. That he would be an assistant to the district managers as a trainee to fill in where necessary.

Q. What did Clark say, if anything?

A. David wasn't sure that he could keep the job.

Q. What did he say in that regard?

A. Well, he said he didn't know whether he could take it or not, and I asked him why and he said that well, he just didn't know whether he would be able to take it, and that he would like to talk to his dad about it.

Q. What else, if anything, did he say?

A. I don't recall too much of the conversation, because probably a lot of it was just casual; but I urged him to call Jack—pardon me, his father, and come on down and talk to me about it and so we could find out why he couldn't take it.

Q. Did he say anything about the cost of carrying insurance as being a factor in why he couldn't take it?

A. Not at that time. I don't recall that.

Q. Did he say anything about whether or not he would be paid mileage at that time?

A. I don't recall whether he was saying—it was a foregone [297] conclusion with me that all the men—

Mr. Mark: I'm going to object to the answer and ask that the last part be stricken.

Trial Examiner: Mr. Collins, I believe your answer

(Testimony of Walter Howard Collins.)

was "I don't recall." The rest of the answer can be stricken. Just try to answer the questions.

Q. (By Mr. Bakaly): Did Clark say anything or complain about the wages of a trainee job in any way?

A. No, he didn't. No.

Q. Did you explain to him at that time that if he didn't take the trainee position you would have to hire somebody else?

A. No. I told him at that time that the trainee job required starting at the job that he presently held, and due to him already having had this previous experience he was the only logical person for the job, and I tried to convince him he should take the job.

Q. All right. Was anything else said by you or Dave at that conversation?

A. Not between Dave and myself, I don't believe.

Q. Did you have a conversation with Dave's father, Mr. Clark, on the 19th of December?

A. Yes, I did.

Q. Where did that conversation take place?

A. At the same place across the street. [298]

Q. At what time?

A. I would gather it was just before noon?

Q. Who was present?

A. Jack Clark, myself, and I believe Jim Hill joined us later. He was looking for me and joined us later, but—

Q. What was said by you and what was said by Mr. Clark?

A. I asked Mr. Clark, I explained the job to him again. I told him that I had asked Dave to have him

(Testimony of Walter Howard Collins.)

come down to talk to me. I explained the job to him, what it would pay, the approximate hours. I told him it would be eliminating the Saturday night work, and he told me also that he didn't believe Dave could take the job and said, "Gosh, I wish you had said this a couple or three days before."

Q. What else did he say?

A. I asked him why and he said, he told me that under the circumstances—he tried to explain something he referred to as "amnesty," the amnesty law, which at that time I did not understand.

He said for that reason he didn't know exactly where David stood, but he said he knew that Dave couldn't accept a new job. And I asked him several times, perhaps a half dozen times, him being a union man and myself not being one, what that amnesty law was all about; and he really couldn't explain it to me.

Trial Examiner: You didn't understand it, in any event? [299]

The Witness: I didn't understand it, no.

Q. (By Mr. Bakaly): What was said about Dave's working in Los Angeles?

Mr. Mark: I object. That's a leading question.

Mr. Bakaly: I asked him what, if anything. That's not a leading question.

Trial Examiner: I think it is leading, but we'll take it.

Q. (By Mr. Bakaly): Do you understand the question?

A. The discussion went on to the fact that Dave had been contacted to join the Mailers Union, which

(Testimony of Walter Howard Collins.)

he thought was a good deal for the kid. He said the kid got a break in being taken in under this amnesty law, which again, as I said, I did not understand; and I told him that well, I didn't know how that affected me whatsoever, how it affected my mail room operations. I told him that my main interest was this job that I had told him about, the job that I was offering Dave.

I think—I recall asking him if he could give me a very definite answer later, and it seemed to me that he said, "I will think about it over the week-end. Let's work something out."

I told him, I said, "I hope Dave decides to take the job."

I asked him if perhaps he could find out what this status was and work out something, let me know over the week-end, and we could talk about it again Monday. [300]

Q. I ask you again, Mr. Collins, what, if anything, was said about Dave's taking the job in Los Angeles? Is it your answer that nothing was said?

A. Oh, no, sir. I'm sorry.

Q. What was said about that, if anything?

A. Mr. Clark told me at that time, "Well, Howard" he says, "I think you ought to have the union in your mail room. It would make it easier." Or something to that extent; and I says, "Well, eventually, when I see the need for it, I'm certainly not anti-union. I will be broadminded and when the time comes for it, when there is an actual need for one, I will be willing to go along with it."

(Testimony of Walter Howard Collins.)

And he told me at that time approximately what the mailers made. He quoted a figure of \$24.00 a day, for how many hours or how much per hour, I don't know but it was a round figure of \$24.00, just a round figure of \$24.00, and he said that if Dave wanted to he could work only a couple of shifts a week and make as much as he was making at the Breeze.

Trial Examiner: Did he say where he could do this work?

The Witness: He said in town—yes, sir. I'm sorry.

Q. (By Mr. Bakaly): What, if anything, did Mr. Clark say about the amount of pay on the new job, or the cost of operating Dave's car or the car insurance on the trainee job?

A. I don't recall any objection to the hours or to the [301] salary whatsoever, by Mr. Clark.

Q. Was anything said about car insurance?

A. No. I don't honestly—I don't remember it, I will put it that way. I don't remember his saying anything about it to me.

May I explain that, sir?

Q. You may explain it, yes.

A. Well, it's—to me, like I said previously, all of my men are paid mileage, every person in our entire plant, and—

Mr. Mark: I'm going to object to that. I don't think that this has anything to do with what Mr. Clark said.

Trial Examiner: You don't remember Mr. Clark saying anything about the insurance or mileage or re-

(Testimony of Walter Howard Collins.)

imbursement for the car operation being a problem; is that right?

The Witness: No, sir. I don't recall that. At the time it might have been said, but I don't recall it.

Q. (By Mr. Bakaly): Now, did you have a conversation with Dave Clark on December 21st?

A. Would that be Monday?

Q. Monday.

A. Yes.

Q. Where did it take place?

A. In my office.

Q. Who was present? [302]

A. I told Leo to watch for Dave and when he first came in have him come on up. I wanted to talk to him. I was busy back in my office.

Q. Leo was present?

A. Yes.

Q. Dave Clark was present and you were present?

A. Yes, sir.

Q. Anybody else? A. No, sir.

Q. When did the conversation take place?

A. When?

Q. Yes.

Trial Examiner: What time of day?

The Witness: About noon. Dave came in—actually, he came and left pretty much as he pleased, as long as he was there and got his work done. I don't recall the exact time that he came in.

Q. (By Mr. Bakaly): What was said by you and what was said by Dave Clark?

A. I again asked Dave if he had thought over

(Testimony of Walter Howard Collins.)

what I had said, if he had thought about the job over the week-end, whether he could take the job.

Q. What did he say?

A. He said, "No." He didn't want the job.— Rather, I'm sorry, that he couldn't take the job; and there were other [303] discussions, casual remarks that I don't remember. I do remember him asking if it would be necessary to stay and help break in a new boy.

Q. What else do you recall his saying, if anything?

A. I believe there was, again, a discussion about the possibilities of work elsewhere. Nothing—

Q. What was said in that regard?

A. Well, that the possibilities of working elsewhere for only two or three shifts a week or—and a heck of a lot more money, was involved.

Q. Dave said this; is that right?

A. Yes. Yes, sir.

Q. All right. You testified that Dave asked if you needed him to train a new man; is that right?

A. Yes.

Q. What did you reply to that?

A. I told him that no, it wasn't necessary because Leo was there. Anyone of the district managers knew his work.

Q. And what next occurred?

A. I can't presume—but I want to say it this way: I presumed he wanted to leave immediately, because he said, "Is there—"

Trial Examiner: Just what happened next?

The Witness: Well, I'm sorry. He asked me then if I needed him to break in a new boy, and I says,

(Testimony of Walter Howard Collins.)

“No, Dave. It’s [304] not necessary,” and he said, “Well, I’ll show Leo what to do.” I think he was in the middle of a mail galley or something. I really don’t know what he was in the middle of, but it was something and he took Leo back down in the mail room to show him what he was on at the time, and he left apparently 25 or 30 minutes after showing Leo where he had left off in his work.

Q. (By Mr. Bakaly): Did Clark say, in this conversation with you, that he wanted to remain on as a fly boy?

A. No, sir. He never said it or even implied it.

Q. Did he complain about being offered the trainee job?

A. No, he didn’t. The only thing to that effect was, “I wish I had known about it a few days earlier.”

Q. All right. Now, after Clark left on the 21st, what, if anything, did you do concerning obtaining payment for him for the services he had rendered at the Breeze?

A. I made my usual note to the general office, rather, our business office, regarding him leaving us.

I requested that he be paid for the whole day Monday. He hadn’t worked the full day, but I requested that he be paid the full day Monday, as well as the full day Saturday he worked, plus, I believe, three more days at the new scale that had been agreed upon which I had already requested, which I had already turned into the business office for.

Q. Did you have a conversation with Clark on December 22nd? [305]

(Testimony of Walter Howard Collins.)

A. What day was that?

Q. That would be the next day, Tuesday.

A. Tuesday? Yes.

Q. Where did it take place?

A. In my office.

Q. Who was present?

A. I believe Leo and I were sitting there discussing something when Dave came in to get his paycheck.

Q. What was said by you and what was said by Dave?

A. Well, when Dave came in I gave him his regular paycheck, which was for the payroll period ending the previous Friday—the date I'm not sure exactly what that would be, the 18th I think. [306]

Trial Examiner: You gave him two checks?

The Witness: I gave him one, and then—I hadn't got to that, sir.

Trial Examiner: I assume that you gave him two checks.

The Witness: I gave him his regular check, and then I gave him his other check and again said I was very sorry to lose him, but I didn't ask him again anything about changing his mind, or anything because—

Trial Examiner: I think, Mr. Bakaly, that covers your questions.

Mr. Bakaly: I asked for the conversation. I asked what was said.

Trial Examiner: What was said by Dave, if anything?

The Witness: When I gave him his check he said,

(Testimony of Walter Howard Collins.)

“Well, golly, I didn’t expect this. Thanks a lot,” and he was quite happy to get the extra money.

There was other casual conversation in a friendly manner, which I won’t attempt to try to swear to.

Q. (By Mr. Bakaly): But his demeanor on that occasion was friendly?

A. Very friendly.

Q. Was his demeanor on the 21st during your conversation also friendly?

A. We have never had anything but a friendly conversation.

Mr. Mark: I am going to put in an objection here. I [307] don’t think that’s relevant. I move to strike all the testimony with regard to the questions that were asked concerning his “demeanor.”

Mr. Bakaly: Well, I’m going to object to this testimony being stricken, Mr. Trial Examiner, for certainly at the time the questions were asked, they were asked without objection.

Secondly, I believe the questions were relevant. A person who has been discharged or fired for any reason doesn’t usually leave in a very friendly fashion, and this is the charge that we are attempting to meet here. The fact that his conduct was friendly certainly is consistent with our position that he was not discharged.

Trial Examiner: Well, it is consistent with the testimony of Mr. Collins that it was stated to him by Mr. Clark in one instance, I believe, and by David in another, that they wished they had known about this a few days earlier. So that the objection and motion to strike is denied.

(Testimony of Walter Howard Collins.)

Q. (By Mr. Bakaly): What, if anything, did Dave say about having worked the night before?

A. Oh, yes. He did say something about that. He said—he said he had worked—well, I believe it has been brought out since that he worked at the Pacific Press. At the time that he told me it sounded something like that to me, but I was not familiar with the place so that as far as the data [308] was concerned, I wouldn't be certain that this is what he said; but whatever the place was, he said that he had worked that night. He had gone up there the same day, and worked that night and he said, "Boy, it was sure rough."

Q. Now, since December 21st, 1959, have you placed anybody in the position or employed anybody as a trainee?

A. Yes, I have.

Q. Who and under what circumstances?

A. One of the boys who had spoken to me about wanting to better himself. He was one of our senior carriers, John Rinde by name. He had one of our motor routes out in the suburban areas, and he came in and began the trainee program.

Q. And in what position did he begin?

A. As a trainee, and started at the flyboy job.

Q. At what rate of pay?

A. At 33 hours per week for \$55.00 a week, and if he works, as I said, anything over 33 hours he is paid at a pro-rate of \$1.67, \$1.68 an hour.

Q. Now, Mr. Collins, was David Clark discharged from the South Bay Daily Breeze for the reason that he joined or assisted the Mailers Union or engaged in

(Testimony of Walter Howard Collins.)

other concerted activities for the purposes of collective bargaining or other mutual aid or protection?

A. Absolutely not.

Q. Was David Clark refused reinstatement or discriminated [309] against in any manner whatsoever for the reason he joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection?

A. No, sir.

Q. Was Dave Clark offered the job of trainee for the reason that he joined or assisted the Mailers Union or engaged in other concerted activity for the purpose of collective bargaining? A. No, sir.

Q. Since December 21, 1959, has Dave Clark asked to be re-employed by the Daily Breeze as a flyboy or in a substantially equivalent position?

A. No, sir.

Q. (By Mr. Bakaly): No further questions.

Mr. Mark: Could I have a couple of minutes?

Trial Examiner: We will take a short recess.

(Short recess.)

Trial Examiner: On the record.

Cross-Examination

Q. (By Mr. Mark): Mr. Collins, you stated that your relationship with Dave was on a very friendly, personal basis; is that correct?

A. Yes, sir.

Q. Is your relationship with all your employees on the same [310] friendly, personal basis?

A. Very much so.

(Testimony of Walter Howard Collins.)

Q. In other words, this was not uncommon for you personally to be interested in the welfare of almost any of your employees? A. Yes, sir.

Q. When did you hire Leo Gagnon?

A. I believe in about May of this past year.

Q. Did Mr. Gagnon at any time work in the mail room? A. No, sir.

Q. He did not?

A. You mean as a flyboy?

Q. As a flyboy. A. No, sir.

Q. Did any of the personnel that you hired afterwards as full time district managers work in the mail room as flyboys?

A. Not as flyboys, but they had to learn the job.

Q. How many men would you say you had hired, just a rough figure, as district managers between the period of—let's say, May, 1959, and December 21, 1959?

A. That would be hard to say without actually checking the records for the dates. There was quite a turnover of full time men.

Q. Then you had this problem with district managers all that time; is that correct? [311]

A. Yes, sir.

Q. And you stated that you brought up the subject of a trainee program many months before December; is that correct? A. Yes, sir.

Q. And nothing had been done about it at the time all of this came up in December; is that correct?

A. Yes, sir.

(Testimony of Walter Howard Collins.)

Q. But you testified that on December 15th you talked to Mr. Curry about a trainee program?

A. Yes, sir.

Q. And you had recommended Dave at that time?

A. Yes, sir.

Q. Was David at work on December 15th, 1959?

A. Yes, sir.

Q. Was David at work on December 16th?

A. Yes, sir.

Q. Was he at work on the 17th?

A. Yes, sir,—if they were all week days.

Q. He was there on every week day?

A. Yes, sir.

Q. Then he was there on the 18th?

A. Yes, sir.

Q. An on the 19th, for the first time, you asked Dave about the trainee position?

A. It was the first time I offered it to him. [312]

Q. But the job had been okayed for him on the 15th?

A. Yes, sir.

Q. You also stated that you had asked Mr. Curry about the Mailers Union, as to whether he had been contacted by them or not; is that right?

Mr. Bakaly: At what time?

Mr. Mark: The witness previously testified, I believe, that he asked Mr. Curry whether Mr. Curry had been contacted by the Mailers Union.

The Witness: I don't know whether I testified to that before or not, but I did ask Mr. Curry.

Q. (By Mr. Mark): You did ask Mr. Curry if he had been contacted by the Mailers Union?

A. Yes.

(Testimony of Walter Howard Collins.)

Q. Isn't it true, Mr. Collins, that for the first time you learned about the presence of the Mailers Union on December 18th, 1959?

A. The day I asked Dave about? Yes.

Q. So you had a conversation with Mr. Curry about the Mailers Union on December 18th; is that correct?

Mr. Bakaly: I object. Well, I withdraw the objection.

The Witness: I asked him, as publisher, if he had been contacted because, as I said,—

Trial Examiner: What day is this?

The Witness: That would be on the 18th. [313]

Q. (By Mr. Mark): Was this before or after your conversation with David? A. It was after.

Q. It was after your conversation with David?

A. Yes.

Q. Where was Mr. Curry at the time you had this conversation with him?

A. He was in his office.

Q. Did you go to his office for the express purpose of asking Mr. Curry this question?

A. Yes, sir. I was very curious as to whether he had been contacted by the union or not.

Q. What reply did he give you when you asked him?

A. He said, "No," that he had not.

Q. Did he ask you why you were asking him this question? A. No, he did not.

Q. Was that the end of your conversation with Mr. Curry?

A. Quite possibly it was. I don't recall.

(Testimony of Walter Howard Collins.)

Q. He had no statement to make whatsoever about the Mailers Union?

A. I just merely asked him if he had been contacted at that time, or up to that time.

Q. He didn't ask you whether you had been contacted yourself? A. No.

Q. He didn't say something like, "No, why? Have you?" [314] A. No.

Q. He didn't wonder at all why you were asking him this question?

A. I wouldn't have been contacted by the Mailers Union. It would have been Mr. Curry, the publisher.

Q. And you had no further conversation with Mr. Curry about the Mailers Union at that time?

A. At that time? No, sir.

Q. Now, you said that you were on a very friendly, personal basis with Dave; is that correct?

A. Yes, sir.

Q. You are not on a very friendly, personal basis with the Mailers Union, now are you?

A. No, sir. I only know two people in that union, two men, by the name of Starbuck and Bowman; and I'm on a very friendly basis with them.

The fact is that I had lunch with them not too long ago. They invited me to have lunch with them.

Q. Do these men work at the Daily Breeze?

A. They are employed by me, yes, sir.

Q. You testified earlier that you have union men in the shop. Do they have a collective bargaining agreement covering these employees?

A. Do they?

(Testimony of Walter Howard Collins.)

Q. Does the South Bay Daily Breeze? [315]

A. Yes, sir. The mechanical department is all union.

Q. How about your printers?

A. Our printers, our composing room, stereotpye and press men, yes, they are all union.

Q. And there is a collective bargaining agreement currently in effect covering these people?

A. Apparently so. I know they are union men.

Trial Examiner: You don't know for sure?

The Witness: No. I'm not familiar with that.

Mr. Bakaly: It's out of his department.

Q. (By Mr. Mark): Do you know whether there's a collective bargaining agreement covering your mechanical employees?

Mr. Bakaly: If you know.

A. I couldn't say—I wouldn't know personally. I just assumed there was. They are union members.

Q. You know of your own knowledge that they are members of the union? A. Yes, sir.

Q. But whether they are covered by a contract in effect between the union and the South Bay Daily Breeze you do not know?

A. I would say I am quite sure they are, for this reason: I have heard them discuss—talking about a new contract with Mr. Curry.

Q. I see. Mr. Collins, are you familiar with the prevailing [316] wage rates for mailers in the Los Angeles area?

Mr. Bakaly: Now? At the present time?

Mr. Mark: Well, on December 18, 1959.

(Testimony of Walter Howard Collins.)

The Witness: At that time, no, sir.

Q. (By Mr. Mark): Were you familiar generally with what mailers were being paid with respect to union mailer rates?

A. No, sir. I wasn't. I haven't the slightest idea.

Q. Were you paying what you considered union scale in the mail room at the Daily Breeze?

A. To David?

Q. To David, yes.

A. I wouldn't know what the union scale was. I was paying what I considered a fair wage for the work that was done.

Q. You have also testified that at times David had used his truck or automobile—

A. Yes.

Q. —to deliver bundles of newspapers.

This was not a frequent occurrence, was it?

A. No. Just probably on three or four occasions.

Q. And at that time the way that David was compensated for the use of his automobile or truck was not by any form of payment for mileage, but rather by adding hours to his time sheet?

A. That's right. Because he was not set up by our bookkeeping department as a person to give mileage to, and I just told [317] him to add whatever was necessary on his time sheet to make up the difference.

Q. So that David had never been compensated for mileage as such, but just compensated on a general basis by adding hours; is that correct?

A. Yes, sir.

Q. And you had never, in fact, paid David any mileage as such?

(Testimony of Walter Howard Collins.)

A. No, sir, not as such. But he did get compensation for it, though.

Q. You testified that this trainee program was put into effect to alleviate the turnover of employees existing in your department at that time.

Was it your intention that David work his way up to a district manager?

A. Yes. If he had wanted to make a career out of it, yes.

Q. But you knew that David had some time to go yet in school, didn't you? A. Yes.

Q. So that, actually, you had no real idea that Dave would become a district manager, anyway, did you?

A. He could have stayed as district manager on a part time basis for as many years as necessary, because the work was only in the afternoon. It would have fitted right in with his school. [318]

Q. But that wouldn't have alleviated the necessity that you had for a full time district manager who was a trainee, would it?

A. It would have alleviated it for the period of time up until I could have trained another one.

Q. But David would never have become, under the circumstances, a full time district manager, would he?

A. Not unless he decided to quit college and take the job.

Q. So, actually, the relationship between David's job and the job of a district manager was somewhat distant, wasn't it?

A. No, sir. I wouldn't say so. I had—may I add to that?

(Testimony of Walter Howard Collins.)

Mr. Mark: No, no. I'd rather you just answer the question.

Q. (By Mr. Mark): How long did you stay talking to Bernard Clark at the Spanish Inn on December 19th?

A. I wouldn't know. It was a common thing for us to go over there and have coffee. I wouldn't know the exact time we spent over there.

Q. But you would say that you were over there for quite a while?

A. Yes, sir. I believe so.

Q. In all this time did Mr. Clark say anything about amnesty?

A. Several times I asked him—I would say that I asked him at least a half a dozen times what it meant, and to my [319] understanding I never got a clear answer.

It might have been to Mr. Clark, but to myself.

Q. Did you, in any way, ask Mr. Clark what the union wanted? A. Pardon?

Q. What the union wanted with the South Bay Daily Breeze?

A. No. I don't believe I did.

Q. Did you ask Mr. Clark in any way whether Dave's job would be affected by his union affiliation?

A. Yes, sir I did.

Q. So that you knew David was a union member?

A. No, I didn't.

Q. You knew that he had signed up with the union?

(Testimony of Walter Howard Collins.)

A. I knew he had spoken with the union man. I didn't ask if he had joined at the time, however.

Q. Isn't it a fact, Mr. Collins, that on that day you told Mr. Clark you didn't want the union in, that you wanted control of the mail room?

A. I told him there was no need for one, and that at the time the need arose undoubtedly we would have a union in the mail room.

Q. On whose opinion were you basing the fact that there was no need?

A. On my own opinion.

Q. In other words, you were not disposed to have a union at the time? [320]

A. No, sir.

Q. Isn't it a fact, Mr. Collins, that on Tuesday, December 22nd, when David came in to pick up his check, you also told Dave that "We're not big enough to be union. Maybe some day, but not right now?"

A. That's exactly what I told him.

Q. And you told his father—

A. —the same thing, yes, sir.

Mr. Mark: I have no further questions.

Redirect Examination

Q. (By Mr. Bakaly): You have testified, on examination by Mr. Mark, that on the 15th you received approval for the job and that you didn't—it's in evidence that you didn't—contact Dave Clark about the job until Saturday, the 19th? A. Yes, sir.

Q. Would you tell the Examiner why there was a four day delay?

(Testimony of Walter Howard Collins.)

A. Well, I had asked for and received approval to pay Dave at the new scale, assuming he was going to take the job. His new scale would have began Saturday; and, such as I do with all the men—I don't even tell them about their raise until I hand them their pay checks and call them in and talk to them and congratulate them and so forth—and Saturday was the beginning of the new period, his new pay period, and he would have started in at the new rate at that time. [321]

Q. You assumed that he would take the job at the new rate, didn't you?

A. I assumed that until Monday, that he was going to take the job, yes, sir.

Q. Did you know on December 19th or December 21st whether or not the Mailers Union represented district managers who did part time mailers work?

A. No, sir.

Q. You didn't know whether they did or whether they didn't? A. No, sir.

Q. Did you know on December 19th that if Dave Clark took the job of trainee he could not be represented in collective bargaining by the Mailers Union?

A. No, sir.

Q. Did that enter into your decision to offer him the job in any way?

A. Not the least bit, no.

Q. Did your decision concerning the Mailers Union enter into the offer of the job to Clark, of the trainee job to Clark in any way?

A. I don't get that first part.

(Testimony of Walter Howard Collins.)

Q. Did you desire concerning the Mailers Union, or your statement, the statement that you made to Mr. Clark that you didn't want the Mailers Union there, or words to that effect, did this have anything to do with your offering Dave Clark [322] the job of trainee?

A. Absolutely not.

Q. You assumed, as a matter of fact, that he would take the job; isn't that true?

A. I assumed it when I first discussed it with Mr. Curry.

Mr. Bakaly: No further questions.

Recross-Examination

Q. (By Mr. Mark): You say that a delay of four days in telling Dave about the trainee position was necessitated by the fact that you wanted to set this thing up and, actually—this is my recollection of your testimony—give David a check and start him out at the new pay before telling him; is that it?

A. No, sir. Your payroll period ends every Friday, and you pay the following Tuesday at the new scale.

Q. But you wanted time to get that all set up; is that correct?

Mr. Mark: I don't have the original of this document, and I wonder if Respondent Counsel has it in his possession. This is a copy of an interoffice communication signed by "Howard", and the top line of which reads, "From H. Collins to R. L. Curry/Don Throe."

I assume that Counsel has the original.

(Testimony of Walter Howard Collins.)

Mr. Bakaly: Do you want the original or do you want a copy? [323]

Mr. Mark: We need the original and a copy.

Mr. Bakaly: I don't have a copy.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Mark: I will ask the reporter to mark this copy of the interoffice communication as General Counsel's Exhibit No. 4.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 4, for identification.)

Q. (By Mr. Mark): Mr. Collins, I show you this interoffice communication which has been marked for identification as General Counsel's Exhibit No. 4, dated 12-22-59 and signed by "Howard", is that your signature? A. Yes, sir.

Q. Would you kindly read aloud the second paragraph of this document?

Mr. Bakaly: Read it aloud?

Mr. Mark: Read it aloud. —for purposes of continuity. [324]

The Witness: "Under the trainee plan, he was to work approximately 33 hours weekly, at the rate of \$55 per week. Breaking that down, it amounts to \$1.67 per hour. As he put in eight hours Saturday, 12-19-59, and it is my desire to give him some termination pay, please give him three additional days of six hours each, or a total of 26 hours pay at the rate of \$1.67 per hour, for a total termination check of \$43.42."

(Testimony of Walter Howard Collins.)

And that's signed by me.

Mr. Mark: I'd like to offer this exhibit into evidence, please.

Trial Examiner: Is there any objection?

Mr. Bakaly: No objection. It's our copy.

Trial Examiner: It will be received in evidence.

(Whereupon the document referred to, General Counsel's No. 4, was received into evidence.)

Q. (By Mr. Mark): Is it not a fact, Mr. Collins, that the first direction you ever gave for the rate of pay, or the change in the rate of pay for David, was at the time you wrote this communication?

A. No, it isn't.

Q. Did you give any other such direction?

A. Yes, sir.

Q. When?

A. I don't recall the exact date. It would have been—[325] it could have been even after this, if David had stayed at the job.

Q. But it was not before this, was it?

A. I don't remember, sir. I know I put another one in.

Mr. Mark: I have no further questions.

Further Redirect Examination

Q. (By Mr. Bakaly): Didn't you testify, Mr. Collins, that the reason you didn't advise David sooner of this offer of a better job was also because it was your usual practice to inform employees of a promotion or raise at the beginning of the pay period when the raise or promotion went into effect?

(Testimony of Walter Howard Collins.)

A. Yes, sir. I have two of them now that don't know this week, and won't know it until today when we give them their checks.

Mr. Bakaly: No further questions.

Trial Examiner: Do you have any more questions, Mr. Mark?

Mr. Mark: I have no more questions.

Trial Examiner: I have a few.

Does this individual that you employed when David left, does he work inside or does he work relieving the district managers?

The Witness: He has gone out with the district managers already, and he is now starting in and learning the [326] fly boy's job.

Trial Examiner: He has taken the place of district managers on occasions when they couldn't work for some reason or another?

The Witness: There has been no occasion arise recently, but he is capable of it.

Trial Examiner: What have been his main duties and hours—or duties, first? Then I will ask you—

The Witness: Right at the first, it is learning the mailing procedure; and when he has occasion now and the need arises, he helps out as an assistant to one of the district managers.

Trial Examiner: How does he assist them? Or I will put it this way: Does he assist the district managers?

The Witness: Actually, to this present stage, all he has had to do is ride with one of the district managers to familiarize himself with the various districts.

(Testimony of Walter Howard Collins.)

Trial Examiner: And how frequently does this occur—has it occurred?

The Witness: It has occurred not too frequently. It depends on how early we get the press run off.

Trial Examiner: Well, in terms of days since December 22nd, how many times has this individual gone out, would you approximate?

The Witness: I wouldn't know, sir, because I am not [327] down in the mail room. He may have gone on several occasions. He might have gone two or three times. I don't know.

Trial Examiner: Who determines whether he goes out?

The Witness: Leo Gagnon.

Trial Examiner: Your assistant?

The Witness: Yes.

Trial Examiner: As it stands now you, in effect, still don't have a relief person for the district managers?

The Witness: No, sir. Because this boy is still a little new at this job.

That is the difficulty with starting all over again.

Trial Examiner: I use the word "relieve", but when he comes—or functions that way, then, in turn, you will have to replace him to do the work that Dave was doing, won't you?

The Witness: That's right. He is also a college student at the same college that Dave attends, and we had to work out a schedule and everything with him.

Mr. Bakaly: Speak up, Mr. Collins.

The Witness: And he had to realign his schedule

(Testimony of Walter Howard Collins.)

We worked it all out with him and he is being pretty well established now.

Trial Examiner: What hours does he work?

The Witness: I believe he gets there from school some time between 12:00 and 12:30. He's paid until 5:30, but we let him go at 3:00 o'clock if the press is finished and [328] he has his work done.

Trial Examiner: On Saturdays what are the hours that he works?

The Witness: He doesn't work Saturdays.

Trial Examiner: He works just during week days; is that correct?

The Witness: He works Sunday morning, plus the five weekday afternoons.

Mr. Bakaly: That is, at the present time?

The Witness: Yes.

Mr. Bakaly: Perhaps you should explain when you started operating a Sunday paper. There's been a change since December 21st that hasn't appeared in the record. They have now gone to a seven-day week.

The Witness: We have now picked up our Saturday paper again, which we dropped in favor of the Sunday paper when that started. That started last June 1st.

Trial Examiner: Is the Sunday work in the mail room, the work that this boy does?

The Witness: Yes.

Trial Examiner: And is that in the early hours, or what time?

The Witness: Yes, sir.

Trial Examiner: About what time?

(Testimony of Walter Howard Collins.)

The Witness: I believe he comes to work late Saturday [329] night. I'm not sure of the exact hours he comes in, but probably about 11:00 o'clock.

You see, we have also had a change in our schedule, the schedule of our shops. One of the advertisers or throwaways that we used to put out on a Saturday evening, as Dave Clark knows we used to go to press at 7:00 o'clock and now that we have a Saturday daily again, the shopper is run immediately after the daily; and so this boy doesn't come in until that has been completed.

In other words, he comes in just in time to go to work on the Sunday daily.

Trial Examiner: Maybe one general question will conclude this: Would you detail as much as you can how the work of your ex-carrier, the carrier that you now have classified as a trainee, differs from the work that David was doing when he was working there at the Daily Breeze?

The Witness: Basically, very little. Until he learns all the mail room procedure which, in my opinion, will take him about two or three months to get that down, the only thing different that he does—he comes in to the office and makes up the envelopes for the district managers the next day, and Leo Gagnon is teaching him some of that procedure for making the draw and so forth.

Trial Examiner: So that, if I understand you correctly, you don't have a trainee function in the way that you [330] contemplated David would function. You have a different type of employment.

(Testimony of Walter Howard Collins.)

The Witness: That's very true, because we didn't have anyone else experienced enough to send in to do the work. That's why it was offered to David, because he had all of that foundation behind him.

I could use one real well right now.

Trial Examiner: What happens when—and I assume that these district managers take vacations, or that one of them will get sick once in a while. What happens then?

The Witness: Lots of times it's a matter of the men doubling up. Right at the present time, I had to let one of the district managers go that had been there for nearly two years. He got things too fouled up.

There was a matter of some money not balancing, and so forth—

Trial Examiner: I'm—

The Witness: Anyhow, there is a vacancy right at the present time, and it's being covered by Dennis Daines. Dennis, being my assistant, is very well versed in all of the operations and he is right now trying to fill in wherever the need is, but that is actually over and above his work.

The need for a trainee is still there.

Trial Examiner: Would you explain why it is valuable for a district manager to know the job functions of a mailer [331] or a fly boy?

The Witness: My own words, sir?

Trial Examiner: I hope they are yours.

The Witness: When I was hired as a district manager, why, as a district manager I had quite a stickler

(Testimony of Walter Howard Collins.)

of a man as circulation manager; and he believed that a man should learn everything about circulation from a mail room right on through—

Trial Examiner: Well, is it something that goes to advertising rates?

The Witness: —A, B, C, and he insisted that I and everybody else learn the mail room, and I have always felt that it was a real good thing for a man to know.

In my previous testimony I said that I want every man to know everything there is to know about circulation in our department.

Trial Examiner: Well, specifically, and this would be putting into, in effect, the form of a negative, what would be the hindrance to a district manager's functions if he was not familiar with the job operations of a mailer or a fly boy?

The Witness: On several occasions Mr. Clark was late or had examinations at school, or was sick or something—

Trial Examiner: I mean in his functions just as a district manager. [332]

The Witness: Nothing with his functions as a district manager. There's a dividing line there between the functions of the two, but knowing it comes in real handy when the need arises.

Trial Examiner: You mean from the standpoint of interchanging personnel?

The Witness: Yes, sir.

Trial Examiner: That's all I have.

Mr. Bakaly: In the light of those questions, I have just a few others.

(Testimony of Walter Howard Collins.)

Further Redirect Examination (Continued)

Q. (By Mr. Bakaly): Isn't it true, Mr. Collins, that the district managers perform certain functions in your organization that are ordinarily performed by mailers?

A. Yes. He always said he was between fly boy and the district manager—

Q. I don't care what he said. I'm asking you another question, Mr. Collins.

Do the district managers in your organization perform certain functions that are ordinarily performed by mailers? Is that right?

A. Yes, sir. Certain of the functions—they tie their own papers, and load them, roll the mail, insert the papers when we have insert, and various things that would come up in a mail room. [333]

Q. You think it is important for all your people to know the various functions in the mail room before they go on to another job?

A. Yes, sir. I felt it was important for myself, and I want them all to be the same way.

Q. Do you contemplate in the near future employing another fly boy and moving the fellow that is presently a fly boy into the position of trainee district manager?

A. Very definitely. I have the approval for that, and when John Rinde becomes familiar enough with that position down there he will be replaced by another boy as fly boy, and he will become extra—what do you call it?—superfluous, a superfluous district manager, to fill in for vacancies, illnesses, shortages,

(Testimony of Walter Howard Collins.)

extra heavy days, late nights, any emergency or contingency that arises.

Q. And right now this is being performed by your assistant, these additional duties?

A. That's right. He shouldn't be doing the outside work. We are just waiting until this new boy has had enough experience.

Mr. Bakaly: That's all I have.

Further Recross-Examination

Q. (By Mr. Mark): You said that your district managers do the job of mailers. You are talking about the typing and bundling of the newspapers; is that correct? [334] A. Yes.

Q. But they are not performing the functions of a fly boy, are they?

A. On occasions they have.

Q. That is when the fly boy has been out?

A. That's right.

Q. But there is really no connection between the two jobs in terms of preparation, outside of your own desire that someone go through that period of training?

A. I think that makes a connection, yes.

Mr. Bakaly: I don't know if the record is sufficient on one point.

Further Redirect Examination

Q. (By Mr. Bakaly): Isn't it true that the fly boy works right in the same room with the district managers, in the same room where they are tying bundles and so forth, and that this is connected with the physical setup at the Daily Breeze, in that the press is just yards away?

(Testimony of Walter Howard Collins.)

A. Our situation is different from most newspapers, yes.

Q. And the physical setup at the Daily Breeze is such that the presses are in conjunction with the mail room, and that as the papers come off the press, the district managers will take their papers and begin tying them, and the fly boy will also be in the same vicinity?

A. Yes. I would say that we have conveyors probably 200 feet [335] away, and the newspapers travel from the folder in the press to where the fly boy picks them up and sets them on the table for the district managers to tie and load out.

Q. So that the fly boy and the district managers work right there together?

A. Oh, very definitely.

Q. If the fly boy had to leave for some reason, a district manager could relieve him; isn't that true?

A. The fly boy does leave every day, and one of the district managers relieves him.

Mr. Mark: No further questions.

Mr. Bakaly: May this witness be excused, Mr. Examiner?

Trial Examiner: Yes. You are excused, Mr. Collins.

(Witness excused.)

Mr. Bakaly: Respondent rests.

Mr. Mark: I have only one question to ask, and that is, if both the Trial Examiner and counsel for the Respondent are satisfied that we have testimony in the record that sufficiently covers under what conditions amnesty is granted.

Trial Examiner: Well, I will state my recollection. My recollection is that where an individual is considered qualified by the official in the union, he can be taken in without serving the apprenticeship, and at a discretionarily reduced initiation fee. [336]

That is what I got from the testimony. Is that what you had in mind?

Mr. Mark: No. Under that set of circumstances I will call Mr. Leathem to the stand again.

FRED MALACHY LEATHEM,

recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

Further Redirect Examination

Q. (By Mr. Mark): Under what circumstances is a person joining the Mailers' Union, Local No. 9, granted amnesty?

A. We grant amnesty for the purpose of effecting organization in non-organized mail rooms.

We grant amnesty to people who are qualified to perform certain aspects of the mailing trade at a reduced initiation fee.

Q. And that is in non-organized mail rooms?

A. In non-organized mail rooms, yes.

Q. And in locations where you have contracts covering mail room employees, are those persons who begin work in the mail room granted amnesty?

A. No.

Mr. Mark: No further questions.

(Testimony of Fred Malachy Leathem.)

Further Recross-Examination

Q. (By Mr. Bakaly): When you take somebody into the union as a journeyman, what experience do you require? [337]

A. We don't—we take a person—can I elaborate on this?

Mr. Bakaly: Go ahead.

The Witness: When we take a person in under amnesty, we do not concern ourselves with the experience and period of time. We concern ourselves with the ability to perform work which is under our jurisdiction.

Q. You could take a person in under amnesty as an apprentice, couldn't you?

A. No. Only as a journeyman.

Q. You cannot? A. No.

Q. So that you on occasion grant amnesty and take people into your union who would not ordinarily be qualified to be journeymen? A. Correct.

Q. And Dave Clark is not presently qualified to be a journeyman mailer, is he?

A. That is correct.

Q. He is not? A. He is not.

Mr. Bakaly: No further questions.

Mr. Mark: I have no further questions.

Trial Examiner: Thank you. You are excused.

Mr. Mark: Counsel for the General Counsel has no further questions. [338]

Trial Examiner: And Respondent rests?

Mr. Bakaly: Yes. Yes.

Trial Examiner: Are you going to argue?

Mr. Mark: No. I intend to file a brief.

Trial Examiner: How about you, Mr. Bakaly?

Mr. Bakaly: I intend to file a brief. I would like to request the maximum time permitted by the regulations for filing the brief. I think that is thirty-some days, isn't it?

Mr. Mark: There is just one other thing. Counsel for the General Counsel would like to make a motion to conform the pleadings to the proof.

Mr. Bakaly: Well, I object to this unless you state specifically in what regard.

Mr. Mark: Just on the technical points.

Mr. Bakaly: You have to tell me what you want to amend, and I will determine whether or not I want to consent to it. I cannot deal in a vacuum. I object to the motion to amend the pleadings unless specified in what regard.

Trial Examiner: Well, after exploring this motion it all seems to eventuate down to taking care of names and dates that are approximations, and if that is what Mr. Mark has in mind, I'm disposed to grant the motion,—if it means that.

Mr. Mark: That is exactly what it means, Mr. Trial [339] Examiner.

Trial Examiner: I am not sure there's any variance at all to begin with.

Mr. Bakaly: That's my understanding, and that's why I always object to this thing. There's no reason for a motion like that. If it's minor, it's not material.

Trial Examiner: It is probably appropriate, in such a motion, that opposing counsel be apprised of what the motion encompasses; but in the event there is some minor discrepancy in dates and names, why, I would consider that the motion has been made over Mr. Bakaly's objection. I will grant it.

Mr. Bakaly: I notice here that the rule, Mr. Examiner, is that you have the power to grant 35 days from the close of the hearing for the filing of briefs.

Trial Examiner: I was just trying to count the days here.

As I compute it, the maximum time I can give is until April the 21st for the filing of briefs, and that will be the date I give you.

You are undoubtedly familiar with the fact that any extension has to be addressed to the Assistant Chief Trial Examiner, 630 Sansome Street, Room 204, San Francisco, California.

I believe that it has to be received three days prior [340] to the expiration here set, and that notice of such request must be served on opposing counsel.

There being nothing further, the hearing will be closed.

(Whereupon, at 3:30 P.M., Tuesday, March 15, 1960, the hearing was closed.) [341]

GENERAL COUNSEL'S EXHIBIT 3

Article V

Jurisdiction

Section 1. All work pertaining to the mailing trade, such as dispatching and receiving of newspapers, newspaper supplements, magazines or periodicals, addressing of wrappers and newspapers; tagging, stamping, labeling; bundling or wrapping, including all types of single wrapping; preparing, stripping or pasting galley lists or wrappers; operating stencil and/or embossing machines, sorting and routing of wrappers, bundles or newspapers; dissecting, opening or marking wrappers; taking bundles or papers from conveyors, chutes or escalators; stacking; folding, whether by hand or machine; handling of bundles or mail sacks; distributing and counting of papers, leaving or returning; tying by hand or machine; sacking; delivering papers to mailers, carriers, agents, truckers or newsboys in the mailing room or delivery room; inserting, stuffing, dissecting, or dispatching of papers, envelopes, circulars, community newspapers, advertising newspapers, colored or any form of newspaper supplements, whether done by hand or power machine, including auxiliary machines used in preparatory work for making plates, stencils, or any device that may be used in placing names or addresses on wrappers or papers, etc., and the filing and correction of all such plates, stencils or galley lists, now in use or that in the future may be introduced; banding,

with wire or metal strips, of bundles, or of skids of bundled or stacked newspapers, newspaper supplements, magazines or periodicals; trucking, which shall include the placing of newspapers, newspaper supplements, magazines or periodicals on push trucks, skids or lift trucks; conveying of newspapers, newspaper supplements, magazines or periodicals by trucks, skids or lift trucks anywhere in the plant and on the loading platform; all work pertaining to the mailers' trade on the loading platform, including the loading or unloading to and from the tailgate of the trucks of all incoming and outgoing newspapers, newspaper supplements, magazines or periodicals; the stuffing or inserting of newspapers by hand or machine, whether performed within the plant or in any building leased, owned or operated by the employer. The operation, manning and handling of any and all machines, mechanical or otherwise, that may now or in the future be used to perform any of the above-mentioned work, is part of the mailing craft, and no person except members or apprentices of the Mailers' Union shall be allowed to perform such work.

Admitted in Evidence March 17, 1960.

GENERAL COUNSEL'S EXHIBIT 4

Inter Office Communication

Date 12-22-59

Subject Termination

From H. Collins

To R. L. Curry/Don Throe

Request you draw final check for David Clark, Circ. Dept. Mr. Clark was offered a new position under our Dist. Mgr. trainee program, but found it impossible to accept due to an opportunity to go elsewhere and do work which gave him more time for his college studies.

Under the trainee plan, he was to work approximately 33 hrs. weekly, at the rate of \$55.00 per week. Breaking that down, it amounts to \$1.67 per hour. As he put in 8 hrs. Sat., 12-19-59, and it is my desire to give him some termination pay, please give him 3 additional days of 6 hours each, or a total of 26 hours pay at the rate of \$1.67 per hour, for a total termination check of \$43.42.

Thanks,

/s/ HOWARD

Admitted in Evidence March 17, 1960.

RESPONDENT'S EXHIBIT 1

State of California, County of Los Angeles—ss.

I, David Clark, make this affidavit in addition to the one dated December 24, 1959.

During my conversation with Mr. Collins on or about December 18, 1959 I did not tell him I had joined the Union. He asked me what I thought about the Union and I said DC I thought it was a pretty good deal. He asked whether I had my card yet and I replied "No". He did not ask me whether I had joined nor did he ask to see my card.

During my conversation with Mr. Collins on Saturday, Dec. 19, 1959, after he'd offered me the trainee job, I said I DC wanted to talk to my dad but I didn't believe I could take it because of the high insurance costs on my car. Collins said he had to know that day because Mr. Curry was in the office and if I didn't take it he'd have to get rid of me & put someone else in the flyboy job & then train him later on the trainee job.

On Monday, December 21, 1959 Mr. Collins asked whether I'd made up my mind yet & I told him that I couldn't take it as I'd told him & my dad had told him on Saturday. I mentioned high insurance rates and mileage on my car. He said something about giving me something for my mileage. He asked what I was going to do & I said I probably could get a job in Los Angeles at my dad's shop.

All other statements in my affidavit of December DC 24, 1959 are true and correct.

When I was terminated by South Bay Daily Breeze, I was paid at the rate of \$1.67 per hour for Saturday, December 19, 1959 and for Monday, Tuesday & Wednesday of the week beginning December 21, 1959. I had worked about 2 hours on Monday. Since my termination I've been sent out to work by the Mailers Union Local No. 9. I worked 3 shifts the week of December 21, 1959 & earned approximately \$78.00. I believe I worked 2 shifts the following [DC] week & earned about \$48.00. Since then I've averaged about 2 shifts a week earning about \$50.00 each week.

I've read the above & swear that it is true to the best of my knowledge & belief.

/s/ DAVID CLARK

Sworn to before me this 22th day of January, 1960
at Los Angeles, California

CARL ABRAMS
Board Agent.

Admitted in Evidence March 15, 1960.

RESPONDENT'S EXHIBIT 2

On this the 11th day of February, 1960. I, David Clark, the undersigned, do further depose and say:

My purpose in joining the Mailers Union was to improve conditions at South Bay Daily Breeze. About four or five months ago, the paper started putting out a Sunday edition. At this time, I was told that I would go in at 4 p.m. on a Saturday and get off at midnight or one a.m. Actually, I worked on the average till about 6 a.m. on Sunday mornings.

I was [DC] frequently worked over 40 hours and only got paid for 40.

My father got in touch with the Mailers' Union representative. He came in around Monday of the week I was offered the trainee position.

I joined the union ~~the~~ [DC] for the purpose of attempting to improve the working conditions. I did not join the union for the purpose of securing or obtaining another job elsewhere. The Mailers Union representative told me that ~~at the time~~ [DC] if the Daily Breeze would let me go because I had joined the union, the union would find me a couple of shifts a week to work. There was no mention of getting any other jobs, otherwise.

On Saturday, Dec. 19, 1959, after offering me the trainee position, Collins told me that he would have to let me go if I didn't take the job. I did not say anything about getting a job anywhere else at that time. I told Collins I would have to talk it over with my father.

On Monday, Dec. 21, I went to work about 11 a.m. and saw Collins around 12 noon or a little after. I told Collins that my decision ~~mind~~ [DC] was the same as it was on Saturday. He said: "I'm sorry to hear that," ~~I'm going to have to let you go and was going to have to get rid of me~~ [DC] and was going to have to let me go. ~~I said~~ [DC] He said that he hated to see me go and asked how I was fixed for a job. I told him I thought I could get a job in L.A. I said this because of what the union representative had told me. ~~We talked a while, I can't remember about what except that it dealt with the u~~ [DC] I remember ~~saying~~ [DC] telling him earlier in the conversation about the increased cost of insurance and gas, and ~~I tol~~ [DC] he said that he might be able to get me something to cover my gas. I repeated to him that I couldn't take the job. He then talked about a couple of guys he had lined up for the job. I then asked him if he wanted me to stick around to help the new guy out and he said no. I asked him if he wanted me to stay and help with the mail galleys, and he said that I should because the way Leo Gagnor could learn how to do it.

I finished the galleys and left around 1 p.m. or a little after. I came home and told my father that I had been let go. My father called the union and was told by them that they could always get me a couple of shifts per week. I was told by my father to go to Pacific Press on Monday night.

Since my termination at the Daily Breeze, I have earned the following amounts:

Employer	Period Ending	AMT.
Hearst Publishing (L. A. Examiner)	Dec. 27, 1959	26.20
	Jan. 17, 1960	46.48
	Jan. 3, 1960	46.48
Rogers & McDonald	Jan. 2, 1960	39.37
	Jan. 16, 1960	52.74
Pacific Press, Inc.	Dec. 27, 1959	78.60
	Jan. 10, 1960	58.01
	Jan. 24, 1960	26.20
	Jan. 31, 1960	78.40

When I joined the union, I realized that after serving my apprenticeship—about three years—I would be eligible for journeyman wages. Apprentices make more per hour—although I don't know a definite scale—than I was making at The Daily Breeze.

When I joined the union, I understood that the union would attempt to contact the publisher of the Breeze, and negotiate a contract for the mail room. There were about six full time employees in the mail room. ~~I wa~~ [DC] I was a part time employee and there were about ~~six three or four~~ [DC] other part time employees. ~~All Some of~~ [DC] these guys only had nominal duties in the mail room. I was the only one whose job was completely in the mail room.

I have nothing further to add. I have read this statement of three pages and swear it is true.

/s/ DAVID CLARK

Sworn to and subscribed before me this 11th day of February, 1960.

/s/ DANIEL S. MARK
NLRB, Atty.

RESPONDENT'S EXHIBIT 3

On this the 5th of February 1960, I Earnest L. Gagnon, 3609 Newton Street, Torrance, Cal, home phone FRontier 5-3869, the undersigned do hereby depose and say:

I was present at a conversation between Howard Collins, circulation manager, and Dave Clark, on Saturday Dec. 19, 1959. Collins offered Dave a job as trainee in the circulation department. Dave said he would have to talk it over with his father. There was no mention of any union or union activity at this or any other time in conversations between Collins' and Dave and myself.

On Monday, Dec. 21, 1959, I was present at another conversation between Collins and Dave Clark. Collins again asked Dave if wanted the trainee job. He explained it and the advantages to Dave. Dave said he wasn't going to take the job and said he had something else in mind. He asked if he should stay to train the new fly boy and Collins said it wasn't necessary. Clark was at work for only a half hour and then left. He had said in this conversation that he was interested in more money and less time in view of his school work.

I never discussed any union with Dave or with Mr. Collins.

I have nothing further to add. I have read this statement of two pages and swear it is true and correct to the best of my knowledge.

/s/ ERNEST L. GAGNON

Sworn to and subscribed before me this 5th of February, 1960.

/s/ DANIEL S. MARK,
Atty. NLRB.

Admitted in Evidence March 15, 1960.

RESPONDENT'S EXHIBIT 4

Jurisdiction and Manning

"Section 17. All work pertaining to newspaper mailing, such as galley work, addressing, tagging, stamping, labeling, bundling, wrapping, (whether done by hand or machine), preparing lists or wrappers, operating stencil embossing machines, operating hand or power mailing machines, sorting, routing, dissecting or marking wrappers, conveying papers from the presses, taking papers from conveyors, tying machines, escalators, and from chutes which discharge papers within the mail room, or to the loading platform, stacking, folding, handling of bundles or mail sacks, distributing, counting of papers, leaving or returning, tying (whether by hand or machine), sacking, delivering papers in the mail room or to the loading platform (to mailers, carriers, agents, or newsboys or truckers), conveying of newspapers by trucks, skids or lift trucks anywhere in the plant and on the loading platform, including the loading or unloading to and from the tailgate of trucks of all incoming and outgoing newspapers, inserting (done by hand or machine), dispatching of papers,

envelopes or magazines by hand or machine, including auxiliary machines used in preparatory work, the operation of any device that may be used in placing names and addresses on wrappers, papers or lists, etc., to be used in newspaper mailing, and the operation of any machinery or device or the performance of any of the work mentioned herein, is a part of the mailing craft, and no person except competent journeymen and apprentices shall be allowed to perform such work. The Employer will make no other contract covering such work.

“Nothing herein contained shall be construed as changing in any manner whatsoever the presently existing loading platform jurisdiction and practices other than by mutual consent during the life of this contract.

“Except where size or condition of paper, or insert, render such minimum impracticable, the standard of competency for inserting of papers shall be based upon the following minimum per man. Provided, papers to be inserted shall be prepared and made ready for inserting.

“Single insert—1500 per hour

“Double insert—1000 per hour

“Triple insert— 700 per hour

“Men working on the escalators and men tying off said escalators by hand or machine shall be considered part of the same operation and one crew and have the privilege, when the run is over thirty-two (32) pages, straight run, or on any collect run of changing off at hourly intervals, with mailers performing other work, than outlined in this section, which they are competent

to perform. It is agreed that present practices of changing men off the escalators and men tying off said escalators by hand or machine presently conforms to the requirements of this paragraph.

“Men working on the escalator and men working on ‘Jampol’ units as operators and men tying off said escalator, by hand or machine, shall be considered part of the same operation and one crew and shall have the privilege of switching off each quarter hour within the crew.

“When the run is (a) 16 to 34 pages inclusive, straight run, two men shall be required on the delivery and of each escalator, provided that if the speed of the press is over 35,000 per hour three men shall be required; (b) 36 pages to 64 pages, straight run, three men shall be required on the delivery end of each escalator, provided that if the speed of the press is over 40,000 per hour four men shall be required; (c) 72 pages or over on a collect run, three men shall be required.

“If and when inserting machines, or Cutler-Hammer stackers or any similar equipment, are installed, it is agreed that negotiations to determine the manning of such machines shall begin not less than sixty (60) days prior to operation.”

Admitted in Evidence March 17, 1960.

RESPONDENT'S EXHIBIT 5

State of California, County of Los Angeles—ss.

I, David Clark, being duly sworn, hereby depose and say:

I reside at 2501 Alvord Lane, Redondo Beach, California; phone—Frontier 9-2697.

I ~~am~~ [DC] was employed as a mailer at the South Bay Daily Breeze, 131 S. Pacific Ave., Redondo Beach, Calif., from July 1958 until December 21, 1959. I was hired by Jack Hansley, former Circulation Manager. About six months ago, Howard Collins became Circulation Manager. He is my boss and I consider him my direct supervisor.

So far as I know, all the production employees (pressmen, etc.) are union except the mailers.

On or about December 14, 1959, I joined the Mailers Union, No. 9, ITU. The Union representative, whose name I don't know, came to my home that day and I gave him my union fee and he gave me a receipt.

On or about December 18, 1959, Collins asked me if the Union had approached me. I replied that it had. Collins asked, "What did they ask you?" And I told him the Union man had asked what the paper's circulation was and whether the plant was Union. Collins then asked, "Well, what do you think of it?", and I replied that I had joined. Collins then asked whether I had my card, and I told him that I did not have it. This conversation took place in the mail room at about 5 PM, quitting time. No one else was present.

The next day, Saturday, December 19, 1959, I went to work as usual at about 10 A.M. Before I was able to go into the mail room, Collins came over and asked me to go to the Spanish Inn, a coffee shop across from the plant, with him. Collins, I, and a circulation employee named Leo Gagon, went to the coffee shop. At the coffee shop Collins told me: "I got an O.K. on this plan I had been working on for several months. It's a trainee program for the circulation department, and it is open to you, Dave, because you have the experience." He explained what my duties would be, and told me that the job would pay \$55 a week (I was then making \$60 a week), but would be less hours than my mailroom job. The duties involved the home delivery of the newspaper.

I told him that I didn't think I could accept the job because I had joined the Union, and because the high insurance rates on my car would make it unprofitable for me. I am 19 years old.

Collins then said, "I have to know today because if you don't want it I'd have to give the job to someone else and let you go." I asked why, and he explained that for a person to hold the trainee job he would have to have at least 3 months experience in the mailroom. I told Collins that I would check with my father.

The paper has seven "fulltime" mailers and seven "part-time" mailers. Although I was classified as a "part-time" mailer, I mostly worked on a "full-time" basis. I have the most seniority of anyone in the mailroom, except for Dennis Daines, assistant circulation manager.

When Collins told me about it, this was the first I had heard about a "trainee job". After speaking to Collins, I called my father, who then came down to see him. I don't know what was said, as I was working. Collins said nothing more about the matter to me that day.

On Monday, December 21, 1959, I came to work as usual. After about 15 or 20 minutes Collins called me up to his office. He asked me, "Well, have you made up your mind?" I replied that I had—it was the same as it was Saturday, "I can't take the job." He said he "was sorry to hear that", and that he was going "to have to get rid of me and hire someone else in my place. He said he had 3 or 4 other boys in mind. He said he would have one hired by the end of the day. I asked whether he wanted me to stick around and help the new boy, and he said "No". So far as I recall, he didn't mention the Union at that time. Leo Gagon was present at this time.

The next day, Tuesday, December 22, 1959, I returned to pick up my check. I saw Collins in his office. No one else was present. Collins again asked whether I wanted the trainee job, and I said, "No". He said he had a boy in mind, but he couldn't come to work until February 1960, because of school. He asked me whether I had a job in mind and I told him "Yes" (The Union has been sending me out to jobs as a fill-in employee in mail rooms).

Collins then started talking about the Union. He said that "some day" it would come in, but "right now" he didn't feel that the paper was "big enough" to be Union. He said he was paying the "full-time" men

Union wages. He also asked me where I had signed up in the Union—whether I had signed up at the plant. I replied that I was signed-up at home. Collins looked surprised at this.

The only one I told I had joined the Union was Collins, and, of course, he Leo Gagon. Collins told my father that someone had told him that I had joined the Union.

I have read the above statement of six (6) pages and I swear that it is true to the best of my knowledge and belief.

/s/ DAVID CLARK

Sworn to and subscribed before me this 24th day of Dec. 1959, at Los Angeles, Calif.

/s/ ABRAHAM SIEGEL,
Atty, NLRB.

Admitted in Evidence March 17, 1960.

[Endorsed]: No. 17310. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Southern California Associated Newspapers, d/b/a South Bay Daily Breeze, Respondent. Transcript of Record. Petition to Enforce an Order of the National Labor Relations Board.

Filed: April 26, 1961.

/s/ FRANK H. SCHMID,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SOUTHERN CALIFORNIA ASSOCIATED
NEWSPAPERS, d/b/a SOUTH BAY DAILY
BREEZE,
Respondent.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151 et seq., as amended by 73 Stat. 519), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Southern California Associated Newspapers, d/b/a South Bay Daily Breeze, its officers, agents, successors, and assigns, Case No. 21-CA-3850.

In support of this petition the Board respectfully shows:

(1) Respondent is engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on February 9, 1961, duly stated its findings of fact and conclusions of law and issued an Order directed to the Respondent, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10(e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent, its officers, agents, successors, and assigns, to comply therewith.

/s/ MARCEL MALLET-PREVOST
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D. C. this 17th day of March, 1961.

[Endorsed]: Filed March 20, 1960. Frank H. Schmid, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCEMENT

Respondent, Southern California Associated Newspapers, d/b/a South Bay Daily Breeze, for answer to the Petition for Enforcement of an Order of the National Labor Relations Board admits, denies and alleges as follows:

I

Admits that Respondent is engaged in business in the State of California and that this Court has jurisdiction.

II

Denies each and every allegation of Paragraph (2), except admits and alleges as follows: On or about February 9, 1961 Petitioner issued its Decision and Order directed to the Respondent, its officers, agents, successors and assigns, in which said Decision and Order the Board adopted the evidentiary findings of the Trial Examiner and stated certain conclusions of law inconsistent with the conclusions of the Trial Examiner. On or about February 9, 1961 said Decision and Order was served upon Respondent by sending a copy thereof postpaid bearing government frank by registered mail to Respondent's counsel.

III

Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph (3).

IV

Opposes the granting by this Court of any of the relief sought by Petitioner in its petition herein for the following reasons:

1. Said Decision and Order of the Board is void in that it is not based upon the findings of fact found by the Trial Examiner and adopted by the Board.

2. Said Decision and Order of the Board is void in that even if it is based upon findings of fact of the Trial Examiner and adopted by the Board, said findings of fact are not supported by substantial evidence on the record considered as a whole.

3. Said Decision and Order of the Board is void in that it is based on erroneous conclusions of law.

4. Said Decision and Order of the Board deprives Respondent of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

Wherefore, Respondent prays that the petition be dismissed.

O'MELVENY & MYERS

/s/ By CHARLES G. BAKALY, Jr.

Attorneys for Respondent.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 5, 1961. Frank H. Schmid,
Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS

1. The Board properly found that respondent, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Sec. 151 *et seq.*), discriminated against its employee, David Clark, in order to impede unionization, and thereby interfered with, restrained and coerced its employees in the exercise of their rights under Section 7 of the Act.

2. Substantial evidence on the record as a whole supports the Board's finding that respondent interrogated David Clark about his union membership in violation of Section 8(a)(1) of the Act.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel
National Labor Relations Board

Dated at Washington, D. C., this 24th day of April, 1961.

[Endorsed]: Filed April 25, 1961. Frank H. Schmid, Clerk.

